Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-1147

THE FIRESTONE TIRE & RUBBER COMPANY,
Petitioner,

v.

S. MARTIN TAYLOR, DIRECTOR, THE MICHIGAN EMPLOYMENT SECURITY COMMISSION, THE MICHIGAN EMPLOYMENT SECURITY COMMISSION, FRANK PADZIESKI, WALTER CAMPBELL, RAYMOND M. LYONS, AND ALEX FULLER, MEMBERS OF THE MICHIGAN EMPLOYMENT SECURITY COMMISSION, INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA,
Respondents.

BRIEF AND APPENDIX IN OPPOSITION FOR RESPONDENT INTERNATIONAL UNION, UAW

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THE FIRESTONE TIRE & RUBBER COMPANY,
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S. MARTIN TAYLOR, DIRECTOR, THE MICHIGAN EMPLOYMENT SECURITY COMMISSION, THE MICHIGAN EMPLOYMENT SECURITY COMMISSION, FRANK PADZIESKI, WALTER CAMPBELL, RAYMOND M. LYONS, AND ALEX FULLER, MEMBERS OF THE MICHIGAN EMPLOYMENT SECURITY COMMISSION, INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA,
Respondents.

BRIEF IN OPPOSITION FOR RESPONDENT INTERNATIONAL UNION, UAW

The International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW,[1] by its counsel, respectfully pray that this Court *deny* the Petition for Writ of Certiorari.

---

[1]Petitioner Firestone Tire & Rubber Company, and its divisions, Hamill Manufacturing Company and Firestone Steel Products Company will all be referred to as "Firestone". Respondent Michigan Employment Security Commission and other State appellees, will jointly be called "MESC" or "the State". Respondent International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), and the other plaintiffs in *UAW* v. *Taylor* will usually be called "UAW" or "plaintiffs", as required by the context.

OPINIONS BELOW

The unreported Opinion below, affirming the District Court, is reproduced in Firestone's Appendix (4a-6a).[2] The relevant District Court Orders in *UAW* v. *Taylor*,[3] are the September 20, 1973 Order as to a three Judge Court (3b-6b); the April 30, 1974 Order as to Notice to Class and Publication (7b-12b); the July 29, 1974 Final Order Granting Relief (27a-29a); the July 28, 1975 Order as to State Employees (24a-26a); and the December 12, 1975 Order Denying Intervention (19a-23a). The Court below also affirmed the District Court's Order granting defendants' motion for summary judgment, in *Firestone* v. *Taylor* (7a-8a).

COUNTER STATEMENT OF THE QUESTIONS PRESENTED

1. Did the Court of Appeals correctly affirm the District Court's exercise of its discretion, under Rule 24, FRCP, in denying Firestone's November 14, 1975 motion to intervene in *UAW* v. *Taylor* under the following circumstances: 1) said suit was filed July 16, 1973; 2) a final judgment was entered on July 29, 1974; and 3) Respondents' uncontroverted affidavits established that: a) Firestone was given notice of said suit on August 17, 1973 and continuously since that date; b) employer interests were adequately represented by defendants; and c) Firestone's intervention

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[2] Pages of Firestone's Appendix will be cited in parenthesis as (a). Pages of Respondent UAW's Appendix and Addendum will be cited as (b). Pages of the Appendix below will be cited as (Appendix Below a or b).

[3] The first and main suit, *UAW, et al v. Taylor, et al*, 6th Cir. No. 76-1474, will usually be called *"UAW* v. *Taylor"* or *"Taylor"*. Firestone's new suit, *Firestone Tire & Rubber Co, et al* v. *Taylor, et al*, 6th Cir. Nos' 76-1966 and 1967, will usually be called *"Firestone* v. *Taylor"* or *"Firestone"*.

would have unduly delayed and prejudiced the rights of the original parties?

Respondent UAW says the answer is "Yes".

2. Did the Court of Appeals correctly affirm the District Court's grant of summary judgment dismissing Firestone's suit to set aside the judgment in *UAW* v. *Taylor* where Firestone's suit was begun over 20 months after said judgment and where Firestone failed to appeal a final State Court judgment, in *Sadro* v. *Hamill Divn. of Firestone and MESC*, which was based upon *UAW* v. *Taylor*?

Respondent UAW says the answer is "Yes".

3. Did the District Court properly grant summary judgment of Firsetone's suit to force the State to credit Firestone's unemployment insurance accounts, with the money to be paid by other employers, and Firestone's suit for a declaratory judgment that the State may not pay unemployment benefits to unemployed pregnant women?

The Court of Appeals implied "Yes".

Respondent UAW says the answer is "Yes".

4. Did *UAW* v. *Taylor* involve a case or controversy where plaintiffs complained of defendants' continued denial of unemployment insurance to certain plaintiffs and to other pregnant women?

The Courts below held "Yes".

Respondent UAW says the answer is "Yes".

COUNTER STATEMENT OF THE CASE

A Counter Statement of the Case is needed because Petitioner's "Statement of the Case" includes argument, irrelevant material not in the record, and numerous other omissions and inaccuracies. The inaccuracies and misleading statements may be corrected by facts printed in capital letters. Facts and proceedings omitted by Firestone may be printed in italics.

A. *UAW, et al* v. *Taylor, et al*

Firestone apparently does not seek *certiorari* in regard to the Court of Appeals' affirmance of the Orders in *UAW* v. *Taylor*. Firestone does, however, seek review of the affirmance of the dismissal of *Firestone* v. *Taylor*, which was its own suit to set aside *UAW* v. *Taylor*. Thus, *UAW* v. *Taylor*, although final, must be considered to evaluate properly Firestone's petition.

In *UAW, et al* v. *Taylor, et al*, plaintiffs sued to stop defendant State agencies from denying unemployment insurance to pregnant women who were forced out of work. The denials were based upon defendants' construction and application of part of Section 48 of the Michigan Employment Security Act (28a; 13b, 17b).[4] The suit did not seek unemployment benefits for any particular woman or ask that the MESA account of any employer be charged. It asked that defendants be ordered to stop automatically denying claims to women forced out of work due to pregnancy, and instead to consider each woman's individual circumstances.

Plaintiffs began *UAW* v. *Taylor* on July 16, 1973. *Though not a party, Firestone was given notice of the suit on August 171973, when a copy of the Complaint and attachments were sent to it.* (Appendix Below, 90a, 204a) *Firestone was given additional notice of that suit repeatedly thereafter.*[5]

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[4] Michigan Employment Security Act, Mich. Stats. Ann. Secs. 17.501, *et seq.*; Mich. Comp. Laws Secs. 421.1, *et seq.*, herein cited as "MESA" or the "Act".

[5] The facts establishing notice to Firestone and other employers, adequate representation of employer interests by the State defendants, an actual controversy and harm to plaintiffs were set forth in affidavits, *not controverted by Firestone*, and in the pleadings. (Appendeces below: 1a-9a, 80a-148a, 164a-246a, 376a-385a, 412a; 3b-22b)

A pre-trial conference was held on September 13, 1973, before then Court of Appeals Judge Wade H. McCree, and then District Judges Damon J. Keith and Cornelia G. Kennedy, *because the Judges questioned the need for a three-judge court* (3b, 4b). *After that conference, plaintiff's counsel withdrew the request for a three-judge court in order "to save time" and because plaintiffs "ultimately expect to prevail on other Federal grounds; thus, the Court need not reach the equal protection issues".* (5b)

Based upon the Judges having questioned the need for a three-judge court and plaintiffs' withdrawal, *the Judges entered an Order "concluding that three judges are not required to decide the merits of the case and remanding it to a single judge "for determination of whatever other federal grounds may be presented by the complaint".* (3b, 4b)

In UAW v Taylor, plaintiffs complained of a State practice, set forth in an informal, internal MESC manual and not even promulgated in any formal MESC regulation. (12b, 13b)

On May 21, 1974, prior to the final Order in UAW v. Taylor, State defendants MESC, its members and Taylor, administratively changed their procedure to cease applying Section 48, MESA, to deny benefits to pregnant women unless such women in fact requested a leave of absence. (14b, 15b, 17b-19b)

The District Court Order of April 30, 1974 directed publication of the proposed *final Order* (8b-8b). The final Order in this suit was entered on July 29, 1974 (27a-29a).

Those Orders were entered due to a settlement in which the State defendants fully participated (11b, 12b).

The District *Court's Order* of July 29, 1974, *held that defendants' practice* prior to plaintiffs' suit was contrary to Federal law (28a). *The Order adds "This Court expressly does not rule upon the validity of Section 48, MESA, or the leave of absence portion of said Section".* (28a)

Contrary to Firestone's position, the Court of Appeals stated:

> "Judge Joiner specifically refrained from finding Section 48 of MESC (sic) unconstitutional. Rather, he found that the practices of MESC in administering the Act violated federal law." (5a)

Section 48, MESA, and the leave of absence portion of said Section was not changed due to UAW v. *Taylor.* (28a)

Firestone states that the Court Order was "totally silent" on what provision of Federal law was contravened by Section 48. THAT IS MISLEADING.

The Order expressly was based upon plaintiffs' Complaint and Motion for Summary Judgment. (27a) Said Complaint set forth several Federal laws which were impeded or violated by defendants' application of Section 48. *Plaintiffs Motion for Partial Summary Judgment and Brief were based upon these same Federal grounds.*[6]

While not mentioning the 1974 Civil Rights Act, *the Judge's Order allowed women to file claims from and after*

[6]Those Federal grounds were set forth in Firestone's Appendix below. (at pp. 22a, 42a-46a, 51a, 52a, 54a-56a, 58a-66a). They include the Complaint that a State defendant denied benefits to union members but granted them to non-union members, under the *same* contracts. The UAW claimed this impeded the NLRA.

July 1, 1965, the effective date of said Act, and required defendants affirmatively to reopen claims back to April 5, 1972, the date the EEOC's Title VII Guidelines were published. (5a, 28a, 29a; 7b-11b)

On August 30, 1974, an Order was entered in Sadro, et al v. *Hamill Mfg. Divn. of Firestone & MESC,* Ingham Cir. Mich. No. 15738-C. (22b, Appendix Below, 200a, 201a) *This State Court Order reversed the agencies' denials of benefits to Firestone's employees and remanded their claims for consideration based on UAW* v. *Taylor.*

BY ORDER OF JULY 28, 1975, THE DISTRICT COURT REJECTED THE MESC'S POSITION ABOUT SAID DEFENDANTS' STATE EMPLOYEES AND HELD THAT THEY WERE COVERED BY THE 1974 ORDER. (24a-26a)

FIRESTONE FALSELY STATES THAT THE JULY, 1975 ORDER APPLIED TO ITS EMPLOYEES AND THAT SAID 1975 ORDER EXTENDED THE SCOPE OF THE FINAL ORDER OF JULY, 1974. The District Judge held otherwise (25a).

FIRESTONE FALSELY STATES THAT UNTIL JULY, 1975, IT HAD NO REASON TO BELIEVE THAT MANY OF ITS EMPLOYEES WOULD BE BENEFITTED BY THE ORDER, BECAUSE IT THOUGHT THAT THE MESC WOULD NOT PAY BENEFITS TO WOMEN WHO WERE FORCED OUT OF WORK PRIOR TO APRIL, 1972. THE DISTRICT JUDGE,

BASED UPON UNCONTROVERTED AFFIDAVITS[7], FOUND THAT FIRESTONE HAD AMPLE NOTICE THAT ITS EMPLOYEES WOULD BE BENEFITTED BEFORE 1972 (20a; 7b-12b)

Firestone sought to intervene on November 17, 1975. (4a) The District Court denied Firestone's motion to intervene in an Order of December 12, 1975, expressly finding that Firestone had knowledge and notice of this suit through its entire proceedings. (20a)

The Court of Appeals affirmed the District Court's decision not to let Firestone intervene (5a).

The only issue technically before this Court is whether the Court of Appeals erred by holding that the District Court did not abuse its discretion in denying Firestone's motion to intervene under Rule 24, FRCP.

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[7] The UAW affidavits showed, in part that, *beginning in September 1974, the MESC issued individual determinations against Hamill Division of Firestone, based upon UAW* v. *Taylor and said MESC Instructions.* (Appendix Below, 232a) *Hamill's Corporate Labor Relations Director was aware of such MESC actions and indicated that he was displeased with them as far back as October 7194. (Ibid)* Firestone, by its counsel, was litigating individual claims (based on *UAW* v. *Taylor*) in March 1975, four months before Firestone pretends it realized that it was affected and eight months before it sought intervention. (50b, 51b)

FIRESTONE FURTHER MISLEADS THIS COURT BY STATING THAT DEFENDANT MESC HAD ISSUED INSTRUCTIONS WHICH EXCLUDED WOMEN PRIOR TO APRIL 5, 1972. NINE DAYS LATER, ON *AUGUST 30, 1974*, THE *MESC* BEGAN OBEYING THE COURT ORDER BY ISSUING REVISED INSTRUCTIONS; *THOSE INSTRUCTIONS, AND A NOTICE TO EMPLOYERS, SENT WITH SAID MESC INSTRUCTIONS, EXPRESSLY PROVIDE THAT CLAIMANTS UNEMPLOYED FROM AND AFTER JUNE 30, 1965 WERE COVERED BY THE 1974 COURT ORDERS.* (19b, 20b) *THE MESC INSTRUCTIONS OF AUGUST 30, 1974 WERE ISSUED AFTER A MEETING OF THE COMMISSION, INCLUDING EMPLOYER REPRESENTATIVES.* (Appendix Below, 81a-83a) 83a)

B. *Firestone* v. *Taylor, et al*

On March 31, 1976, while its *UAW* v. *Taylor* appeal was pending, Firestone filed a new suit. Here, Firestone attempted to set aside the July 29, 1974 judgment in the earlier suit,[8] *UAW* v. *Taylor,* and to have the District Court issue a declaratory judgment in opposition to that issued in *UAW* v. *Taylor,* on the grounds that: 1) a three-judge court was required in said *UAW* v. *Taylor,* and 2) the *UAW* v. *Taylor* judgment was contrary to law on the merits of the substantive issues (14a-17a).

Firestone also asked the Court to enjoin the State from including in its calculations of the amount Firestone is assessed under the MESA, benefits paid to women placed on maternity leave by Firestone and to credit Firestone's MESA account for any amounts charged against it by the State due to *UAW* v. *Taylor.* (17a, 118a) In the Coutr below, *Firestone admitted that if it prevails in having its MESA account credited, "these amounts [will] be made up by all employers in Michigan".* (Firestone Court of Appeals Brief, note 8, p. 20; 53b)[9]

Respondents filed motions for summary judgment which were supported by affidavits and other material. (20b-26b); Appendix Below 401a-412a) *Firestone filed no counter-affidavits.*

On June 17, 1976, the District Court granted defendants' motion for summary judgment and dismissed Firestone's new suit. (7a-9a) The Court of Appeals affirmed. (5a, 6a).

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[8] Firestone's Complaint deals with the 1974 Order, which Firestone pretends did not affect it (13a-15a). See *supra,* at pp 7, 8.

[9] Firestone did not join any such employers other than Respondents MESC and UAW.

SUMMARY OF ARGUMENT

The decisions of the Court below were procedural and were based upon factual findings peculiar to this case. Neither such procedural rulings nor any ruling on the merits present important questions. Such holdings are in accord with recent decisions of this Court and with the decisions of all Circuit Courts, which have considered the issues.

The District Court properly denied Firestone's motion to intervene in *UAW* v. *Taylor* because of its untimeliness and because Firestone's interests were adequately represented. Firestone's new suit, which was brought to set aside *UAW* v. *Taylor*, was properly dismissed because it was begun over one year after the final Order in *Taylor*. Firestone's new suit was barred because of a final State Court order in a case against Firestone involving the same issues.

Firestone may not compel the State to credit its unemployment insurance account at the expense of other employers. Firestone's request for a declaratory judgment that Federal law does not require the State to pay benefits to pregnant women is moot because the State voluntarily ceased that practice prior to any final order in *UAW* v. *Taylor*. The decisions below are in accordance with the construction of the Michigan Statute by Michigan Courts. This case is not important because Federal law was changed in 1976 to clearly bar the practice which the State had voluntarily stopped in 1974.

ARGUMENT

I. THE COURT OF APPEALS CORRECTLY AFFIRMED THE DISTRICT JUDGE'S DENIAL OF FIRESTONE'S MOTION TO INTERVENE IN *UAW* v. *TAYLOR*:

AN EMPLOYER MAY NOT INTERVENE AS A DEFENDANT IN A SUIT AGAINST STATE AGENCIES WHERE: 1) SAID STATE DEFENDANTS INCLUDE EMPLOYER REPRESENTATIVES AND THE STATE ADEQUATELY REPRESENTED DEFENDANTS' AND EMPLOYER INTERESTS; 2) THE EMPLOYER HAD ACTUAL KNOWLEDGE OF AND RECEIVED NOTICE OF THE SUIT DURING ITS PENDENCY AND MORE THAN TWO YEARS BEFORE ITS MOTIONS WERE FILED, HAD NOTICE OF WHEN JUDGMENT WAS ENTERED AND HOW SUCH JUDGMENT AFFECTED IT; 3) THE PURPORTED INTERVENOR WAS NOT AN INDISPENSABLE OR NECESSARY PARTY TO THE SUIT; 4) ITS INTERVENTION WILL HARM EXISTING PARTIES AND OTHERS; AND 5) INTERVENTION WOULD NOT CHANGE THE RESULT IN THE CASE.

The Court of Appeals affirmed the District Court's denial of Firestone's motion to intervene in *UAW* v. *Taylor* (4a-6a). The Court below also cited Firstone's untimely attempt to intervene in *Taylor* as a reason for dismissing Firestone's new suit. (5a, 6a)

Firestone does not seek review of the denials of intervention and it does not expressly argue that issue in its petition. However, its not being allowed to intervene relates to and defeats its Arguments III, II and even I.

In regard to intervention, the Court of Appeals states:

> ". . . Final judgment in *UAW* v. *Taylor* was entered by agreement of the parties on July 29, 1974.

Firestone's motion to intervene was filed November 17, 1975.

In denying the motion to intervene for lack of timeliness the district court found that Firestone had "informal and actual notice" of the July 29, 1974 judgment and a subsequent order entered July 28, 1975. This finding is amply supported by the record. The district court found that Firestone was neither a necessary nor an indispensable party to *UAW* v. *Taylor*, which involved the validity under federal law of the practice of MESC of denying unemployment compensation to employees in Michigan who were forced to take leaves of absence due to pregnancy. We find no such compelling circumstances in this case as would require the district court to permit intervention after entry of final judgment. The district court did not abuse its discretion in denying intervention." (Citation Omitted, 4a)

That holding affirmed the discretion of the District Judge, based upon uncontroverted facts in this record. The Court of Appeals was correct.

This issue is certainly not important for this Court to consider. The denial of intervention is in accord with decisions by this Court and by Courts of Appeals.[10]

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[10] See, for example: *NAACP* v. *New York*, 413 U.S. 345, 365-367 (1973); *Chase Manhattan Bank (N.A.)* v. *Corp. Hotelera de Puerto Rico*, 516 F.2d 1047, 1049 (1st Cir. 1975); *Commonwealth of Pennsylvania, et al* v. *Rizzo, et al*, 530 F.2d 501, 505 (3d Cir. 1976); *Black* v. *Central Motor Lines, Inc*, 500 F.2d 407, 408 (4th Cir. 1974); *US* v. *United States Steel Corp*, 548 F.2d 1232, 1235 (5th Cir. 1977); *EEOC* v. *United Airlines, Inc*, 515 F.2d 946, 949 (7th Cir. 1975); *Nevilles* v. *EEOC*, 511 F.2d 303, 305 (8th Cir. 1975); and *Spangler* v. *Pasadena City Board of Educ*, 427 F.2d 1352, 1355 (9th Cir. 1970). The District Court relied upon this Court's decision, in NAACP, *supra*. (20a)

This Court very recently denied motions to intervene by Republic Steel and U.S. Steel Corporations, though their employees were involved. *Ohio Bureau of Empl. Services* v. *Hodory*, 429 U.S. 814 (1976). The Ohio Bureau, the agency comparable to the MESC, defended that case.

In its Argument III, Firestone argues that the defendants did not adequately represent its interests.[11] This is properly considered under the intervention issue. Rule 24(a)(2) and (b)(2), F.R.C.P.

In this regard, the Court of Appeals correctly rejected Firestone's argument:

> "Finally, Firestone fails to allege facts suggesting that its interests were not adequately represented. Courts have recognized that '. . . a presumption of adequate representation generally arises when the representative is a governmental body or officer charged by law with representing the interests of the absentee.' (citations omitted). MESC has the authority to promulgate rules and regulations to carry out the provisions of the Act, M.C.L.A. §421.4; two of its four voting members represent employer interests, M.C.L.A. §421.3. Firestone does not claim that MESC acted in bad faith. Indeed, the record reveals competent representation by the Commission. That its efforts culminated in a consent decree is not evidence *per se* of inadequate representation." (5a, 6a)

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[11] The burden was on Firestone to prove inadequate representation by existing parties. *Blanchard* v. *Johnson*, 532 F.2d 1074, 1077 (6th Cir. 1976), affirming denial of intervention and relying upon *Afro American Patrolmen's League* v. *Duck*, 503 F.2d 294, 298 (6th Cir. 1974); and *Commonwealth of Pennsylvania* v. *Rizzo*, 530 F.2d 501, 505 (3rd Cir. 1976).

The above ruling by the Court of Appeals was in accord with comments by the District Judge that the State had adequately represented employer interests.

FIRESTONE MISLEADINGLY STATES THAT "THE STATE'S COUNSEL HAD CONCEDED THAT IT DID NOT REPRESENT EMPLOYER'S INTERESTS". The Assistant Attorney General merely stated during argument that *his office* represents "the State and the Commission. . . and no employers necessarily." (at p. 23 of Firestone's Brief) Earlier, he stated that an association of manufacturers had representatives at MESC meetings. (Appendix Below, 304a)

Respondents uncontroverted affidavits (filed in both suits) established that: 1. Defendant MESC was and is an "employer" under the MESC and had its own accounts charged due to *UAW* v. *Taylor;* 2. the MESC, by statute, represented employer interests (6a); and 3. *the eight person MESC Advisory Council included four employer representatives.*[12] (Section 3a, MESA)

Firestone, having chosen not to contest such affidavits, should not here (for the first time) complain that summary judgment was entered against it.

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[12] In 1969 and thereafter, the following employer representatives were members of the MESC Advisory Council: Colin L. Smith, Employer Unemployment Compensation Council, and then his successor, director of the EUCC; M. Jane Kay, Detroit Edison Company; Brice B. Maddox, Gardner-Denver Company; and Joseph A. Reilly, Ford Motor Company. (82a) A case in which the MESC, as the employer, had its accounts charged due to *UAW* v. *Taylor* is included in the Addendum. (48b, 49b)

THIS WAS NOT A COLLUSIVE LAWSUIT.[13] THE STATE CONTESTED THIS SUIT by filing a Motion to Dismiss and a Brief. (Appendix Below, 10a-21a)

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[13] Respondent's affidavits and Complaint established that this suit was not collusive (Appendix Below, 167a, 165a). Firestone cites the second Michigan Court of Appeals opinion in Rozankovich v. Kalamazoo Spring Corp., 44 Mich. App. 426, 205 N.W.2d 311 (1973). Assuming, *arguendo*, that the Michigan Court may have said (in *dictum*) that it is not wise for courts to invalidate statutes in uncontested and non-adversary cases, that is not what happened in UAW v. Taylor. In UAW v. Taylor, the parties did not agree or stipulate that the law was unconstitutional. Section 48 was not voided in UAW v. Taylor, and the Court did not even rule that its application was unconstitutional. (208a)

In its earlier Rozankovich opinion, 41 Mich. App. 717, 200 N.W.2d 719 (1972), the Court reversed the denial of benefits to a plaintiff, who had been placed on maternity leave, because it was not shown that the particular collective bargaining contract "obligated Mrs. Rozankovich to accept against her will a leave of absence which she did not request." (at 718)

Later, after Rozankovich was decided by the State Court of Appeals, the *winning* plaintiff filed a delayed application for rehearing asking that the Court of Appeals invalidate the Section 28(1)(c) pregnancy proviso. (44 Mich. App. at 427) The Court could properly have refused to invalidate the Section 28 proviso because the issue had not been raised below and because plaintiff, in fact, had relied on Section 28 before the lower court and agencies.

Rozankovich does not help Firestone. Contrary to Firestone's brief, the State Court did not advise or hold that the Attorney General and private parties could never settle cases or enter consent judgments in suits involving the MESA. Moreover, such advice or "admonition", which Firestone claims was ignored in UAW v. Taylor, would not bind a Federal Court.

Ironically, about one month after the Court of Appeals failed to rule in Rozankovich, the Michigan Circuit Court, in Goodman v. Chrysler, on motion by claimant and with the expressed non-opposition by lawyers for Chrysler and the MESC, did invalidate the pregnancy provision in Section 28, because it conflicted with Federal law and denied equal protection of the law. Goodman, 6 CCH Un. Ins. Reps. Mich. ¶ 9341 (Wayne County, Mich. Cir. Ct. No. 208, 538, 1973) is here cited by Firestone and is included in the Addendum to UAW brief. (33b-37b) Firestone and other employers were bound by Goodman, though they were not parties, because the State agencies applied Goodman as the law in Michigan.

If, as Firestone here urges, the Michigan Courts' views on Federal law are to bind Federal courts, then Firestone's argument is self-defeating. The State Court, in Goodman, did void the pregnancy provision, in Section 28, without any opposition by Chrysler or the MESC.

Only after and as a direct result of this Court's decision in Cleveland Board of Educ., v. *LaFleur,* 414 U.S. 632 (1974), *did defendants agree to a judgment in this case. This was a settlement.* (11b)[14]

II. THE COURT OF APPEALS CORRECTLY HELD THAT FIRESTONE COULD NOT OBTAIN RE-EXAMINATION OF THE ISSUES IN *UAW* v. *TAYLOR* THROUGH ITS NEW SUIT

This discussion corresponds with Firestone's Argument II.

A. Procedurally, Firestone's Suit to Set Aside *UAW* v. *Taylor* Was Properly Barred Because It was Begun Over One Year After The Final Order in Taylor

Firestone's March 31, 1976 Complaint (9a) sought to set aside the July 29, 1974 Order in *UAW* v. *Taylor.* (13a-15a)

In District Court, Firestone admitted that it may have no relief under Rule 60(b)(1), (2) and (3), FRCP, because it filed more than one year after the 1974 Order was entered. However, Firestone asked the District Court to invoke Rule 60(b)(4) and (6) to relieve Firestone from the effects of said Court's order. The District Court correctly refused to do so. (6a)

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[14] Plaintiffs conceded the following: 1) plaintiffs dropped their claim that Section 48, MESA, was unlawful on its face. (28a; Appendix below, 76a, 72a, 313a); 2) While women could file claims for unemployment back to July 1, 1965, the MESC was only required to affirmatively search its files and mail notices to women class members back to May 1, 1971, and to automatically reopen claims from April 5, 1972. (20a, 21a, 28a, Appendix Below, 76a, 307a, 369a, 380a-384a) 3) plaintiffs dropped their claim for lost time and money for certain plaintiffs (Complaint, Para 6; Appendix below 3a); and 4) plaintiffs dropped their claim for attorneys fees and costs. (Prayer V; Appendix Below, 8a) Appendix B, the notice to the class, refers to a "compromise" and a "settlement". (11b)

Rule 60(b)(4) does not help Firestone because the Court's Order was not and is not void. (5a)

The District Court's jurisdiction is apparent from the Complaint in *UAW* v. *Taylor.* The UAW's Brief for Summary Judgment cited Federal cases throughout the country, involving the State agencies as defendants, and requesting similar relief.

Firestone may not avail itself of Rule 60(b)(6), because Firestone is time-barred from relying upon any part of Rule 60(b). A motion under Rule 60(b)(6) must be made "within a reasonable time". The facts and law which establish Firestone's untimeliness under Rule 24 also establish its untimeliness under Rule 60(b)(6). See discussion, *supra,* at pages .

Moreover, if a motion falls within the reasons stated in Rule 60(b)(1), (2) and (3), the one-year period applies even if a party expressly relies upon Rule 60(b)(6).[15]

B. Firestone is Barred From Altering the 1974 Court Order Because of the Ingham Circuit Court Order in *Sadro, et al* v. *Hamill Division of Firestone & MESC.*

In August 1973, Firestone was served with a copy of the Claim of Appeal in *Sadro, et al* v. *Hamill Division of*

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[15] See, for example, Serzysko v. Chase Manhattan Bank, 461 F.2d 699, 701, 702 (2d Cir. 1972), *cert.* denied 409 U.S. 883, *rehearing denied,* 409 U.S. 1029 (1972), which held that Rule 60(b)(6) could not be invoked to circumvent the one-year limitations under 60(b)(1).

See also *Rader* v. *Cliburn,* 476 F.2d 182 (6th Cir. 1973), which involved a District Court decision which ordered the election of members of the Board of Education for concurrent terms. Plaintiffs, not parties to the earlier suit, brought an action to "correct" the earlier Order because it allegedly was contrary to a Tennessee Statute requiring members to be elected for staggered terms. The Court held that plaintiffs could get no relief under Rule 60(b)(6) or through an independent suit in equity, because there were no "unusual and exceptional circumstances" which could justify disturbing the prior Order.

Firestone and MESC, Ingham Cir. No. 15738-C.(b)[16] It chose not to appear.

On August 30, 1974, an order was entered in said State court case, reversing the State agencies' denial of unemployment insurance to Firestone's employees, who had been forced out of work due to pregnancy. (22b) The State court order was expressly based upon the court's July 29, 1974 Order in *Taylor*. The State court, thus held that the district court had jurisdiction in *Taylor,* that the district court acted properly and the State courts were bound by *Taylor.* Firestone is bound by all of said holdings.

Firestone's Federal suit to set aside *UAW* v *Taylor* was barred, by *res judicata* or collateral estoppel. It cannot re-litigate in Federal Court what was decided by the Ingham Circuit Court. If Firestone was displeased with the Ingham Circuit Court Order, then it should have sought rehearing in that court or appealed to the Michigan Court of Appeals.

It is the general rule that parties to a State court proceeding, who later become parties in a Federal court, are bound by the determination of issues litigated and by any judgment entered by that State court. Firestone is so bound both under Federal statutory law and case law.[17]

[16] The *Sadro* material and affidavits establishing service on Firestone were part of the record below. (166a, 167a, Exh. 1; 171a, 172a, 304a; Exh. 11, 200a, 201a, 404a-412a; 22b-23b)

[17] The Ingham Circuit Court Order must be given "full faith and credit." Title 28, U.S.C.A. Section 1738. And see International Association of Machinists, Local Lodge No. 1038 v. Jeffrey Galion Mfg. Co., 350 F.2d 512, 513 (6th Cir. 1965), *cert.* denied, 383 U.S. 927 (1966); Thomas et al v. Consolidation Coal Co., et al, 380 F.2d 69, 75 (4th Cir. 1967), cert den, 389 U.S. 1004 (1967), and Rhodes v. Jones, 351 F.2d 884, 885, 886, 889 (8th Cir. 1965)). Compare Domozik v. Cohen, 413 F.2d 5 (3rd Cir. 1969); and Hicks v. City of Los Angeles, 240 F.2d 495 (9th Cir. 1957). Collateral estoppel was discussed by this Court in Ashe v. Swenson, 397 U.S. 436, 443 (1970). And see United States 1. Fusco, 427 F.2d 361, 362 (7th Cir. 1970), and Turner v. Mahar, 423 F.2d 258, 259 (6th Cir. 1970).

At the very least, the *Sadro* v. *Firestone* suit provided Firestone with additional notice of *UAW* v. *Taylor.* It refutes Firestone's claim that it did not know that its own employees were affected before 1975.

The Court of Appeals correctly held that Firestone could not, in its second suit, do what its untimeliness prevented it from doing in *UAW* v. *Taylor.* (6a) Such rulings were based upon the undisputed facts. They are not sufficiently important for this Court to review.

III. THIS PETITION RAISES NO IMPORTANT SUBSTANTIVE ISSUES: FIRESTONE IS NOT ENTITLED TO INJUNCTIVE RELIEF OR TO A DECLARATORY JUDGMENT THAT FEDERAL LAW DOES NOT REQUIRE THE MESC TO PAY BENEFITS TO PREGNANT WOMEN WHO WERE FORCED ON MANDATORY MATERNITY LEAVES.

Firestone does not seek certiorari from the Court of Appeals affirmance of the District Court in *UAW* v. *Taylor.* If this Court examines Firestone's Complaint in its own suit, it must be considered in light of the finality of *UAW* v. *Taylor.*

Firestone asks that the MESC credit Firestone's accounts, with money to be made up from all other employers. (53b; Prayers 4 and 5, 17a).[18] Firestone also asks the Court to enjoin the parts of the MESA, under which the MESC charges employers' accounts when claimants

[18] Those employers would include: a. GM and defendant agencies, which also forced women out, but have now had their own MESA accounts charged; and b. employers which never forced any women on maternity leave. Either of those results, or recovering moneys paid to plaintiff class members, would be inequitable.

receive benefits. (Prayer 3; 17a)[19] There is no basis for such relief under Michigan or Federal law. In any event, the *failure* to allow Firestone such strange relief does not raise any important issues. The decisions below do not conflict with applicable State law. (Supreme Court Rule 19.1 (b).

Firestone's request for a declaratory judgment, that the law does not require the State defendants to pay unemployment benefits to women forced out due to pregnancy, is moot. The State voluntarily ceased its policy denying benefits to such women on May 31, 1974, after *UAW* v. *Taylor* was filed. (14b, 15b, 17b, 18b)

The issue has no future implications for Firestone. Firestone ceased forcing pregnant women out of work in 1972 and in 1973. (Complaint, Section 14; 12a; Firestone Brief, p. 6)

In *UAW* v. *Taylor*, plaintiffs noted that, as a result of the April, 1972 EEOC Guidelines and the Court of Appeals decision, in *LaFleur*,[20] Michigan employers generally had, in 1972 and 1973, eliminated or refused to enforce mandatory maternity leave clauses in contracts. This is in sharp contrast to the denial of sickness and accident pay to pregnant women, where many major employers challenged those Guidelines before the EEOC and in the Courts.[21]

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[19] Ironically, Firestone did not ask for a three judge court, though basing its Complaint on the 5th and 14th Amendments of the U.S. Constitution (Para. 27, 16a)

[20] LaFleur v. Cleveland Board of Education, 465 F.2d 1185 (6th Cir. 1972), affirmed, 414 U.S. 632 (1974).

[21] Such employers included General Electric (429 U.S. 125, 1976), Chrysler, Ford and General Motors.

A. The Courts Below Did Not Hold That the State's Denial of Benefits Directly Violates Title VII

Firestone, in its Argument I.A. speculates that the Court below directly held that the MESC violated Title VII of the 1964 Civil Rights Act. Firestone then flails its "straw issue".

Plaintiffs, in *UAW* v. *Taylor*, did not bring a Title VII suit for backpay and other relief.[22] Nor did the Courts below hold that the MESC directly violated Title VII.

Plaintiffs contended and the Courts below held that the MESC's *construction* of Section 48, MESA, impeded certain Federal laws and were contrary to others. (See note 6, supra, pp. 6, 7)[23]

B. This Court Has Recently Held That It Is Unlawful To Deny Unemployment Insurance To Pregnant Women Who Are Able To Work; That Ruling Was In Accord With Prior Federal Decisions.

This Court and other courts hold that it is unlawful to deny unemployment insurance to a woman who was forced out of work due to pregnancy, without regard for such woman's individual ability to work. *Turner* v. *Dept. of Emp. Sec. of Utah*, 423 U.S. 44 (1975).[24] This Court held that

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[22] Nor did Nash v. Florida Industrial Commission, 389 U.S. 235 (1967) hold that Florida committed an unfair labor practice under the NLRA.

[23] Thus, there is no conflict between the Sixth Circuit decision and Vick v. Texas Employment Commission, 514 F.2d 734, *reh. den.* 520 F.2d 944 (5th Cir. 1975). Moreover, Vick did not hold that the *practices* of State agencies could never be stopped where they impede Federal laws.

[24] Turner is especially significant, because this Court summarily reversed the Utah court. Firestone sought to intervene in UAW v. Taylor just before this Court decided Turner. Firestone's post-Turner tenacity is not admirable.

Turner was "virtually identical" to *LaFleur, supra.* (at 46) This Court stressed that pregnant women cannot automatically be denied unemployment insurance for fixed periods of time. (at 46) Eligibility for such benefits must depend upon each woman's individual circumstances. In *UAW* v. *Taylor,* the State had automatically denied benefits to women for fixed periods due to said unlawful mantory maternity leave policies.

Prior to *Turner, supra,* other courts had held that it was unlawful to deny unemployment insurance to women due to pregnancy.[25]

Although Turner was based upon the due process clause of the Constitution, the "fair hearing" and when "due" provisions of Section 303(a) of the Social Security Act provide similar guarantees to pregnant women, denied unemployment insurance without regard for their individual abilities to work.[26]

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[25] See, e.g., Jordan v. Meskill, ... F. Supp. ....., CCH Un. Reps. Fedl. ¶ 21, 420 (D. Conn. 1973), aff'd, Jordan v. Fusari, 496 F.2d 646, 647 (2nd Cir. 1974), but *remanded* on issue of attorneys fees; Hanson v. Hutt, 83 Wash. 2d 195, 517 P. 2d 599, 1973); Stickel v. Mason, ... F. Supp. ....., CCH Fedl. Un. Ins. Reps. ¶ 21, 415 (D. Md. 1973); Lasko v. Garnes, Administrator, ... F. Supp. ....., CCH Fedl. Un. Ins. Reps. ¶ 421 (N.D. Ohio 1973); Goodman v. Chrysler and MESC, CCH Un. Ins. Reps. ¶ 9341 (Wayne Cir. Mich. No. 208 538, 1973); and Heier v. Dept. of Industry. 11 CCH Un. Ins. Reps. ¶ 8637 (Wisc. Cir. Ct. 1973). Goodman is in the Addendum. (33b-37b)

See also Sylara v. Industrial Comm. et al, ... Colo., ..., 550 P.2d 868, 870 (1976), relying upon LaFleur and Turner, supra. There were similar rulings by State Attorney Generals in Michigan, Tennessee and Oklahoma. (12b, 13b, 45b-48b, 52b)

[26] 42 U.S.C.A. Section 503(a)(1) and (3). Compare Smith v. District Un. Comp. Bd., 435 F.2d 433, 437, 438 (D.C. Cir. 1970), and California Dept. of Human Resources Development v. Java, 402 U.S. 121, 132, 133 (1971).

C. The Lower Court Decisions May Be Justified Merely By Construing The Michigan Statute As a Michigan Court Did And As The MESC (Due to *UAW* v. *Taylor*) Finally Did. Such State Construction Does Not Present Important Questions For This Court.

All employees, men and women, are denied unemployment benefits when they are *not able* to work. Thus, the MESC applied Section 48 only against women who *could* work. (13b, 14b, 17b-19b)

Michigan Courts, prior to *UAW* v. *Taylor,* had held that it was contrary to the purposes of the Michigan Statute to deny benefits to women forced out due to pregnancy. *Goodman* v. *Chrysler & MESC* 6 CCH Un. Ins. Reps. Section 9341 (Wayne Cir. Mich. No. 208 538, 1973), and *Mileff* v. *MES Appeal Board,* CCH Un. Ins. Reps. Section 8764 (Wayne Cir. Mich. No. 304-515, 1960).[27]

In *Mileff, supra,* the Court held that the leave of absence part of Section 48 could not be construed to deprive a women of benefits, after delivery of her baby, when she physically could return to work. (39b) The State defendants here did not follow *Mileff*. Plaintiffs, in *UAW* v. *Taylor,* had long urged defendants to properly construe Section 48; their refusal led to *UAW* v. *Taylor*. (Appendix Below, 86a-88a; 165a, 166a; 171a-196a)

Other State Courts had similarly construed their sta-

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[27] Both opinions, which are reproduced in the Addendum (*infra,* 33b-45b) are by highly respected Michigan jurists.

tutes not to deny benefits to women forced out due to pregnancy.[28]

In *UAW* v. *Taylor*, the State's actions were unlawful as contrary to the policies of the Federal Unemployment Insurance Program, without even reaching any sex discrimination issues. That is because they denied unemployment insurance to employees, who were forced out of work without remuneration when they were physically able and available to work.[29]

The *Michigan* Courts held that the MESC's practices were contrary to Michigan and to Federal law. The MESC voluntarily stopped denying benefits to pregnant women in May, 1974. (14b) Thus, it is Firestone's new suit, and not the decisions below, which conflicts with State law. (Supreme Court Rule 19.1.(b)).

This Court has recently held that States generally decide which involuntarily out of work employees may receive unemployment benefits.[30] Thus, Firestone may not force

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[28] See, for example: Harwood v. Employment Sec. Comm., 16 Ariz. 64, 490 P.2d 1192 (1971); Myerson v. Board of Review, 43 N.J. Super 196, 128 A.2d 15 (App. Div. 1957); Smith v. Unemployment Comp. Bd. of Rev., 393 Pa. 557, 154 A.2d 492 (1959); and Douglas Aircraft Co. v. Calif. Un. Ins. App. Bd., 180 Calif. App. 2d 636, 642, P.2d (1960). As the court said, in Myerson, *supra:* "Unemployment compensation is not to be denied persons merely because the employe or the collective bargaining agreement designates a period of unemployment as a leave of absence . . ." (128 A.2d at 17)

[29] See, for example Goodman v. Chrysler Corp. and the MESC Manua,l 12b, 13b, relying in part on the Opinion of the Michigan Attorney. Both said decision and Opinion were partly based upon U.S. Dept. of Labor Letter No. 1097 (Dec. 31, 1970). (34b) (Reproduced in Addendum, 32b-33b). Note Tennessee Opinion. (52b)

[30] Ohio Bureau of Employment Services v. Hodory, 52 LE2d 513, 523, 524 (1977). This Court did note that the Ohio Statute did not involve any fundamental interest or affect with particularity any protected class. 52 L.E.2d at 527.

Michigan to construe and apply its Statute to deny benefits to unemployed pregnant women.

D. Contrary to Firestone's Petition, This Case Is Not a Desirable Vehicle For Consideration of Whether Forcing Women Out Due To Pregnancy Violates Title VII Of The Civil Rights Act.

The Law Is Clear That Forcing Women Out Due To Pregnancy Is Unlawful.
The Decisions Below Do Not Conflict With *Gilbert* or *Satty*.
This Case Is Not Appropriate For Consideration Of Whether the Supremacy Clause Was Expanded.

Firestone alleges in its new suit, as it unsuccessfully argued to the District Court in *UAW* v. *Taylor*, that it is lawful to force women out of work due to pregnancy, without regard to their individual abilities to work.

As indicated in Arguments I, II, III. A., B. and C., *supra*, the District Court properly granted Respondents' motions for summary judgment of Firestone's suit. Those grounds for dismissal need not involve Firestone's said Argument I. 3.1. *UAW* v. *Taylor* involved the denial of unemployment insurance to pregnant women. It only indirectly concerned the validity of such employment practices under Title VII of the Civil Rights Act.[31] No party in *UAW* v. *Taylor* was held liable for violating Title VII. Thus, this Petition does not directly present the issue which Firestone wishes this Court to consider.

Moreover, this Court and others *have* decided Firestone's Argument I.B.1. against Firestone; it *is* unlawful, under Title VII and the Constitution, to force women out of work

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[31] Of course, this Court, in Turner, based its holding as to unemployment insurance on LaFleur; and LaFleur held it unlawful for a School Board to force pregnant teachers out of work.

due to pregnancy regardless of their individual abilities to work.[32]

The class of plaintiffs, in *UAW* v. *Taylor,* included women who were fired and laid off due to pregnancy (28a, 25a, 21a) and it included employees of the State. (24a). Thus, loss of seniority cases *(Satty)* and cases based upon the Constitution *(LaFleur)* support Respondents.

The UAW knows of no other employer which shares Firestone's view that such conduct is lawful. Even Firestone changed its policies afte rthe 1972 EEOC Guidelines, 29 C.F.R. Sec. 1604.10, published April 5, 1972. (Firestone Brief, p. 6 and para. 14 of the Complaint, 12a)

The decisions below do not conflict with *Geduldig, Gilbert,* or *Satty.*[33] *Gilbert* and *Satty* (in part) were *private disability* cases. *Geduldig* was a state *disability* case. In *Geduldig,* this Court partly relied upon the fact that covering

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[32] See, for example: Cleveland Board of Educ. v. LaFleur, 414 U.S. 632 (1974), *aff'g* 465 F.2d 1184 (6th Cir. 1972); Nashville Gas Co. v. Satty, U.S. , 54 LE.2d 356 (1977) *aff'g* and *rev'g* 522 F.2d 850 (6th Cir. 1975). While Satty is mainly a disability insurance case, the Court's affirmance of the back pay award to plaintiff (at 855) clearly is a holding that it is unlawful to force women out due to pregnancy. This Court affirmed the Sixth Circuit as to the loss of seniority portion of the case (54 L.E. 2d, at 362-3); Singer v. Mahoning County Bd. of Mental Retardation, 379 F. Supp. 986, 989 (N.D. Ohio, 1974), *aff'd* as to damages and attorneys fees because the employer admitted that forcing women out after the fifth month was unlawful, 519 F.2d 748, 749 (5th Cir. 1975); and Paxman v. Wilkerson, 380 F. Supp. 422 E.D. Va. 1975), *appeal dismissed,* 502 F.2d 1163. (4th Cir. 1975) See also Crawford v. Cushman, 531 F.2d 1114 (2d Cir. 1976), holding that a Marine regulation requiring pregnant women to be discharged denied equal protection of law (citing LaFleur; at 1122) and violated the due process clause (citing Turner; at 1124); and Jacobs v. Martin Sweets Co., 550 F.2d 364, 370 (6th Cir. 1977), citing LaFleur.

[33] Geduldig v. Aiello, 417 U.S. 484 (1974); General Electric v. Gilbert, 429 U.S. 125 (1976) and Nashville Gas Co. v. Satty, U.S. , 54 L.E. 2d 356 (1977).

normal pregnancies would increase the costs to the same low income persons intended to be benefited by the disability plan.

Plaintiffs here, as in *LaFleur, Turner,*[34] and *Satty, supra,* lost their jobs when they were physically able to work. *Turner,* which relies upon *LaFleur,* holds that the automatic denial of unemployment insurance to such persons is unlawful. Thus, this Court relates unemployment insurance to lost employment and does not treat it as mere sick pay for someone who has temporarily left work of her own accord.

Firestone, in its Argument I. B. 2., claims that the Court below expands the Supremacy Clause by extending the doctrine of *Nash* v. *Florida Industrial Commission,* 389 U.S. 235 (1967). Although plaintiffs cited *Nash,*[35] neither the Court of Appeals nor the District Judge relied upon *Nash.* (4a-8a, 19a-23a; 7b-12b)

Thus, the decisions below do not present this Court with

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[34] Cleveland Board of Educ. v. LaFleur, 414 U.S. 632 (1974) and Turner v. Dept. of Emp. Sec. of Utah, 423 U.S. 44 (1975).

[35] Plaintiffs argued that Title VII of the Civil Rights Act and its purposes were impeded because the State defendants based their denial of MESA benefits on employer practices, which were unlawful said Federal law. Plaintiffs also showed that the National Labor Relations Act was impeded because defendant MES Appeal Board granted MESA benefits to non-union members but denied benefits to union members covered by the same maternity leave clauses in contracts. (pp. 3a, 4a, 7a, 34a, 60a, 63a and 65a of Court of Appeals Appendix). Nash was cited for both propositions. Other authorities included Goodman v. Chrysler Corp. and MESC, and the Opinion of the Oklahoma Attorney General, No. 72-211 (Nov. 22, 1972), relying in part upon the Social Security Act, the Federal Program, and Title VII of the 1964 Civil Rights Act to hold Oklahoma's pregnancy exclusion unlawful. Addendum, 46b-48b)

an opportunity to review any alleged extension of *Nash* or expansion of the Supremacy clause.

Firestone also argues that "The Court below's extension of *Nash* . . . directly contravenes explicit holdings of this Court that a state law will not be set aside unless—[it really has to be]".[36] The Courts, in *UAW* v. *Taylor,* did not set aside any State law. (5a) Section 48, MESA, including the leave of absence part of that Section, remains intact. (28a) Moreover, the *State* itself had "set aside" its earlier *construction* of Section 48 prior to the final Order in *UAW* v. *Taylor.* (14b, 15b, 17b, 18b)

Firestone expresses belated concern that the lower Courts' alleged extension of *Nash* would interject Federal law farther into State matters than ever intended. It is Firestone, in its new suit, who asks the Federal Court to interfere with the State (17a; 53b) Firestone's request would cause Respondent MESC to set aside State laws and to spend much time and money crediting Firestone's accounts and then charging the accounts of other employers.

E. Changes In State Laws And Recent Federal Law Changes Make This Case Even Less Worthy Of This Court's Review.

In 1970, the Department of Labor advised States to eliminate special pregnancy disqualifications from their unemployment insurance laws. (32b, 33b). As a result of that letter and various Federal and State Court decisions and State Attorney General Opinions, the States began

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[36] Ironically, it is only Firestone who asks the Federal Court to set aside State laws. (Firestone's Complaint, paragraphs 2., 3., 4. and 5.; 17a)

eliminating such provisions which treated unemployed pregnant women different than others who could work.[37] *Turner* hastened these changes. The EEOC's post-*GE* v. *Gilbert* instructions emphasized that denying unemployment benefits, due to pregnancy, was still unlawful.[38]

In 1976, Congress reflected the case law by expressly providing that States may not deny unemployment insurance to pregnant women.[39]

Accordingly, this issue has lost the importance that it had in 1973, when *UAW* v. *Taylor* was begun.[40]

Moreover, almost all employers stopped forcing pregnant women out of work after April, 1972. The comparatively few women, who lose jobs or seniority due to pregnancy, may seek full back pay before the EEOC and in Court. Receipt of such pay would ultimately preclude receipt of State unemployment benefits.

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[37] Among the States which had directly or indirectly discriminated against pregnant women since 1971, at least 34 states have eliminated pregnancy exclusions in their statutes and six have replaced time limit exclusions w/ provisions disqualifying pregnant women while actually disabled. "The impact of the Equal Rights Principle on State Unemployment Compensation Laws, by Brown, Freedman, Katz and Price; Women and the Law Symposium on Sex Discrimination, unpublished materials (Mar. 1976), citing in part the December 1970 U.S. Dept. of Dabor Letter (32b), a chart by Margaret Dahm, published in U.S. Dept. of Labor Benefit Series Service, Un. Ins., Rept. 304, (Sept. 1975; Intl. Women's Year Special Supplement)

[38] These are partly reproduced in the Addendum. (27b-27b)

[39] The Federal Unemployment Tax Act, 42 U.S.C.A. Sec. 3304(a)(12), as amended by Pub. Law 94-566 (Addendum, 30b)

[40] The fact that Firestone's accounts will not be credited or that some women may sue for back unemployment benefits (where allowed by state statutes of limitations) does not make this case appropriate for certiorari. Compare Jordan v. Fusari, 496 F.2d 646, 648 (2d Cir. 1976), where the Court noted that it would be futile to remand that case for consideration by a three judge court since the statute in question had been repealed for over six months.

Accordingly, this case is only important to Firestone who seeks money at the expense of other Michigan employers and who tenaciously desires a moot ruling that the MESC may deny unemployment insurance to pregnancy women. Even if the substantive issues may be considered the Petition clearly presents no issues which are now of sufficient importance for this Court to review.

IV. FIRESTONE HAS NOT BEEN UNFAIRLY TREATED. ITS TREATMENT DOES NOT RAISE ANY CONSTITUTIONAL ISSUES, IMPORTANT OR OTHERWISE. OTHER GROUNDS FOR DENYING THE PETITION INCLUDE: 1) FIRESTONE'S LACHES AND 2) FIRESTONE'S NOT BEING ENTITLED TO ANY EQUITABLE RELIEF.

In its Argument III, Firestone cries unfairness in several respects and seeks to raise constitutional issues.

Contrary to Firestone's argument, the Court below correctly affirmed the District Judge's grant of Respondents motion for summary judgment. The Courts' holding, that Firestone's interests were adequately represented and that Firestone's suit was untimely, were based upon uncontroverted affidavits, the District Judge's own observations, and the Michigan Statute. (5a, 6a; 26b, 29b)[41]

Moreover, as a matter of law the Courts below properly held that Firestone's suit was untimely (6a) and that Firestone was wrong on the merits. (8a, 20a, and see Brief, *supra*, pp. 10-15) The Courts below did ignore the procedural requirements of Title VII of the Civil Rights Act. That was because *UAW* v. *Taylor* was not a Title

[41] Summary judgment for defendants was required because Firestone failed to controvert the affidavits. Rule 56(e), FRCP. Firestone did not raise this issue below; this may have been because all of Respondents uncontroverted affidavits were available to the Courts below.

VII suit for back pay or similar relief. (See discussion, *supra*, p. 20)

Contrary to Firestone's argument, this litigation shows no pattern of depriving Firestone of its rights. See the Counter Statement of the Case and Arguments I and II, *supra*.

Ware v. *Estes*, 328 F.Supp. 657 (N.D. Tex. 1971), *aff'd*, 458 F.2d 1360 (5th Cir.), *cert denied*, 409 U.S. 1027 (1972) does not conflict with the decisions beiow. In *Ware*, the Court merely held that a consent decree entered by a Court, in a *different jurisdiction* (D.Mass) was of little or no precedential value. (at 659) That is quite different than holding that a class action suit, in the same jurisdiction, of which the party in the new suit had ample notice and an opportunity to be heard, is a precedent.

Firestone argues that the District Court lacked jurisdiction to issue its final Order in *UAW* v. *Taylor* because there was no "case" or "controversy" within Article III, Section 2 of the Constitution. (Firestone's Question Presented No. 5 and Argument III). The Court of Appeals correctly rejected Firestone's view. (5a) While none of Firestone's arguments even approach respectability, this may be Firestone's least substantial "issue".

The undisputed facts establish that defendant State agencies were denying benefits to actual persons for the unlawful basis complained of in *UAW* v. *Taylor*, (21a, 25a, 28a; 18b; and Appendix below, (3a-7a, 86a, 87a, 171a-183a) Plaintiffs' counsel was unable to persuade defendants to follow Federal law and, thus, was forced to sue. (Appendix below, 86a-88a; 165a, 166a 171a-196a)

The District Court and defendants' counsel indicated that this case was hotly contested until this Court issued its decision in *LaFleur, supra*. (Appendix below, 310a) See

also the discussion as to the State financial interest in defending *Taylor* and as to adequate represenation by the State. (Appendix below, 86a-88a, 165a, 166a, 171a-196a)

Far from capitulating, certain defendants even failed to obey the Court Orders, in *Taylor, until* faced with possible contempt of Court during the December, 1975 argument. (23a, 25a; and Appendix below, 84a-86a, 94a)

Finally, the District Court did not hear just one side of the case. It considered and properly rejected Firestone's views on the merits in *UAW* v. *Taylor* (6a, 20a) and in Firestone's new suit. (8a; Appendix below, 357a)

As to adequacy of the State's representation, the Court of Appeals, relied upon the Appendix below, and said: "Indeed, the record reveals competent representation by the Commission." (6a)

The Court of Appeals correctly noted that:

> ". . . the fact that *UAW* v. *Taylor* was eventually terminated with a consent judgment does not indicate that there was no case or controversy between the parties. See *United States* v. *Board of School Commissioners*, 466 F.2d 573, 575 (7th Cir. 1972), *cert. denied*, 410 U.S. 909 (1973)." (5a)[42]

The case or controversy requirement is designed to insure that courts avoid issuing advisory opinions on abstract or hypothetical propositions of law and instead decide only definite and concrete questions touching legal relations of parties having adverse interests. The doctrine does not exist to assure that the parties in a true adversary proceeding handle the case in a manner satisfactory to every would-be intervenor.

The case or controversy requirements are met when

[42] See also Jordan v. Fusari, 496 F.2d 646, 648 (2d Cir. 1974), where the State had consented to a judgment after settlement of the case. In *Jordan*, the operation of part of Connecticut's unemployment insurance law was enjoinded.

there exists an actual legal dispute between the parties, as existed in *UAW* v. *Taylor*. Any question that might be raised about the adequacy of one or the other party's representation is irrelevant to the existence of a case or controversy.

In Firestone's new suit, it argued that the District Court also lacked the power to decide *UAW* v. *Taylor* because a three judge court was needed. The Court of Appeals and the District Court correctly rejected that argument (5a, 4b)

Though Firestone appears reluctant to abandon its three judge court argument,[43] since it does not formally argue it, Respondent UAW will not discuss that "issue" except as noted.[44]

[43] See pages 10 and 11 of Firestone's Statement of the Case and note 3.

[44] The three judge panel correctly ruled that "three judges are not required to decide the merits of this case" and then remanded the case to "consideration of the single judge to whom it was initially assigned for determination of whatever other Federal grounds may be presented by the complaint." (4b) Plainitffs withdrew any constitutional issues, prior to said ruling (5b). A three-judge court was not needed in July 1974, because the MESC, as of May 21, 1974, no longer denied benefits to women who were placed on maternity leaves, unless those women had actually requested such maternity leaves. (14b, 15b, 17b) This change was probably due to the settlement reached on April 30, 1974. ((11b, 19b) The District Court's Order of July 29, 1974 was a consent judgment entered due to a settlement in which the State defendants fully participated. (10b, 11b) Thus, the Federal Court did not disrupt any States procedures in any way which could possibly require a three judge court. In Jordan v. Fusari, 496 F.2d 646, 648 (2d Cir. 1974) the Court said that a three judge court was not needed because the State there had also consented to a judgment. The Court in UAW v. Taylor, did not invalidate § 48 of the MESA. (5a)

The District Court held the State's practice "unlawful as contrary to Federal law." (28a) The Court did not rely upon said 14th Amendment. If there is any doubt about the basis of the District Court's holding, then it should be resolved against Firestone, because Courts should avoid constitutional rulings where possible. Youakim v. Miller, 425 U.S. 231, 236 (1976).

This Court's Rule 24.1 mandates that Respondent briefly disclose other grounds why this Court should not review this case.[45] These grounds include Firestone's laches and other equitable considerations.

Laches may bar consideration of a suit where there is both lack of diligence on the part of a plaintiff and prejudice to a defendant.[46]

While the Courts below did not rule upon the laches defense to Firestone's suit, the District Court made findings, in *UAW* v. *Taylor,* which were analogous to a holding that laches barred Firestone's relief. The Court denied Firestone's motion to intervene as untimely because Firestone had informal and actual notice of *UAW* v. *Taylor* suit. (4a, 20a)

Firestone's knowledge of *UAW* v. *Taylor* and its lack of diligence is discussed, *supra.* (at pp. 4 and 8)

In District Court, Firestone argued that laches did not bar its suit to set aside *UAW* v. *Taylor* because its new suit was begun only about three months after the District Court denied its motion to intervene. Firestone, having been found to be untimely in *UAW* v. *Taylor,* did not cure that defect by filing its new suit. Firestone's delay of over two years in *UAW* v. *Taylor* was increased by three months when it filed its new suit.

Allowing Firestone its requested relief would prejudice the Defendants-Respondents in *Firestone* v. *Taylor. Firestone admits that granting it relief by crediting its MESA account will cause "these amounts to be made up by all*

[45] The UAW's Motion for Summary Judgment presented several reasons for dismissing Firestone's suit. The *res judicata* or collateral estoppel ground was discussed *supra,* pp. 16-18.

[46] See, for example American Home Products Corp. v. Lockwood Mfg. Co., 483 F.2d 1120, 1122 (6th Cir. 1973), *cert. den.,* 414 U.S. 1158, where the Court held an action for the infringement of a patent barred by laches.

employers in Michigan." (53b)[47] Those employers, who would thus be prejudiced by Firestone's intervention, include Respondents UAW and the MESC and the Appeal Board.

Thousands of women have applied for and received benefits because of the 1974 final Order in *UAW* v .*Taylor.* Firestone's new suit jeopardizes their benefits.[48]

Firestone had notice of that suit in August of 1973. It knew that its accounts were being charged, because of benefits paid to its employees, due to *Taylor,* after August 30, 1974. (16b-20b, 50b; Appendix below, 18b, 90a, 91a, 167a, 168a, 370a, 383a) In March, 1975, Firestone's counsel was told by an MESC Referee that Firestone should *then* seek relief in Federal Court. (b; Appendix below, 219a-223a) It is clear that Firestone sat on its hands while the State made said payments.

Firestone's relief would also harm defendant MESC by requiring it to reopen numerous files in order to credit Firestone's MESA account.[49]

Finally, Firestone wants to reopen *UAW* v. *Taylor,* begin discovery and litigate its erroneous legal theory that it is all right to force women out due to pregnancy and them then deny them unemployment insurance. Allowing that to deny them unemployment insurance. Allowing that *UAW* v. *Taylor,* their counsel and the courts by subject-

[47] Firestone is not entitled to this unsual relief. If such relief were granted Firestone, GM and every other employer in Michigan could then bring suit to have their accounts credited due to charges caused by this suit or by Firestone's intervention.

[48] Through Firestone claimed, in the Court below, that it is not asking the women to repay benefits, in fact Firestone is before the State agencies trying to recover benefits paid its empolyees. (5$b, 51b)

[49] This disruption of the State's system would be similar to that relied upon to deny intervention in NAACP v. New York, *supra,* 413 U.S. at 369.

ing everyone to such tiresome, wasteful and ludicrous proceedings.

In *Taylor* and in its new action, Firestone seeks equitable relief—that is, the crediting of its MESA accounts. Moreover, equitable considerations are involved in the issue of whether the District Court abused its discretion in not bending Rule 24, FRCP in favor of Firestone.

Under principles of equity, Firestone is entitled to no such relief. It would be inequitable for Firestone's accounts to be credited at the expense of all other Michigan employers (as Firestone requests) or at the expense of Firestone's women employees.

Firestone unlawfully forced women out of work due to pregnancy. (Firestone Brief, p. 6; 12a) Firestone did not pay full back pay to these women and, thus, has already profited from its wrongdoing while its women employees suffered financially from Firestone's unlawfulness.

Even considering the small amount of money involved in unemployment insurance benefits (compared to lost back pay), Firestone has not been hurt financially to any great extent. Because of its unlawful actions and those of the defendant agencies, Firestone's MESA account was not charged with unemployment insurance from July 1, 1965 to September, 1974. Thus, for over nine years, Firestone had the use of such money, interest free. (24b, 25b)[50]

Moreover, if a court were to grant plaintiffs' request to have its account credited by the MESC, it would cause the MESC to spend considerable time and money undoing what it previously did and this time to benefit a wrongdoer.

Firestone has dirty hands and is not entitled to ask this Court or the Courts below for any such equitable relief.

[50] Plaintiffs did not seek interest on the amounts wrongfully withheld from members of the class, which would have been a proper measure of relief.

CONCLUSION

For the foregoing reasons, this Court should *deny* the Petition.

Respectfully submitted,
John A. Fillion
General Counsel, UAW
Jordan Rossen
M. Jay Whitman
Associate General Counsel, UAW
By: /s/ Jordan Rossen[51]
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Dated: March 7, 1978.

[51] Research for parts of this Brief was done by Mary Flanagan, a law student working in the UAW Legal Department and supervised by UAW counsel.

INDEX OF APPENDIX OF RESPONDENT UAW

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3. MESC Manual, Part 6335 (March 20, 1972)*....12b, 13b
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5. MESC Instructions of August 30, 1974 and attached Forms*** 16b-20b
6. UAW's Motion for Summary Judgment in *Firesone* v. *Taylor* and Attached Affidavits.....20b-26b

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*This part of the MESC Manual (12b-14b) was attached to and incorporated in plaintiffs' Complaint in UAW v. Taylor.

**The MESC Manual of May 21, 1974 (14b, 15b) is not a part of the record below. However, it is described in the MESC Instructions (17b) and is herein included for the Court's and counsel's convenience.

***These MESC Instructions of August 30, 1974 (16b-20b) were referred to in the District Court's Orders of July 28 and December 12, 1975 in UAW v. Taylor. They were submitted to said Court in the summer of 1974 and again prior to said 1975 Orders. Employers were notified of said Instructions and they were widely publicized. Certain pages of the Instructions are here omitted.

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UAW v. TAYLOR ORDER AS TO THREE JUDGE COURT UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MICHIGAN SOUTHERN DIVISION

(September 20, 1973)

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTRAL IMPLEMENT WORKERS OF AMERICA, UAW, PATRICIA SCHENCK, et al., on behalf of themselves and on behalf of all women employees of Michigan,
Plaintiffs

- vs -

S. MARTIN TAYLOR, Director of the Michigan Employment Security Commission (MESC), et al.,
Defendants.

Civil Action No. 4-70066

ORDER

A three-judge court having been duly convened to consider this action.

And the court, *sua sponte*, having questioned whether the claim that the state statute involved is unconstitutional presents a substantial issue, and having requested the parties to file briefs on this question,

And counsel for plaintiffs having withdrawn the request for a three-judge court as evidenced by his letter attached hereto,

And the court concluding that three judges are not required to decide the merits of the case,

UAW v. TAYLOR ORDER AS TO THREE JUDGE COURT

Upon consideration, it is ORDERED that the three-judge court be, and it hereby is, dissolved, and the cause is remanded for the consideration of the single judge to whom it was initially assigned for determination of whatever other federal grounds may be presented by the complaint.

/s/ WADE H. McCREE, JR.
The Honorable Wade H. McCree Jr.
United States Circuit Judge
/s/ DAMON J. KEITH
The Honorable Damon J. Keith
United States District Judge
/s/ CORNELIA G. KENNEDY
The Honorable Cornelia G. Kennedy
United States District Judge

Dated at Detroit, Michigan, September 20th, A.D. 1973

LETTER ATTACHED TO SEPT. 20, 1973 COURT ORDER

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA-UAW

Solidarity House
8000 East Jefferson Ave.
Detroit, Michigan 48214
Phone (313) 926-5216

September 17, 1973

Hon. Wade H. McCree, Jr.
707 Federal Building
Detroit, Michigan 48226

Re: UAW, et al v. Taylor, et al
Civ. Act. No. 4-70066

Dear Judge McCree:

We requested a three-judge court in the Complaint in the above case because we believed (and still believe) a three-judge court to be appropriate. At the conference, on September 13, we were given until September 20 to file another Brief on that issue. I wrote that Brief last week-end. We believe that it is a close question. However, for various reasons, we are not going to file the Brief.

Instead, we hereby withdraw our request for a three-judge court and ask that our Complaint be considered before a single judge. We do this because time is extremely important. Presently, women throughout Michigan are losing benefits because of the State's action and they are spending money and time litigating the maternity leave issues. In addition to our desire to save time, we ultimately expect to prevail on other Federal grounds; thus, the Court need not reach the equal protection issues. We believe that

our withdrawing our request for a three-judge court at this time will avoid litigating unnecessary issues in the case before this Court and, perhaps, on appeal.

Your law clerk, Ms. Donna Murasky, indicated that the Court could enter an appropriate Order based on this letter. If it is desired, we can also amend our Complaint. We would hope that any such Order would be entered as soon as possible so that this case can proceed on the substantive issues before a single judge.

We hereby request oral argument in regard to defendants' motion to dismiss and our motion for summary judgment.

Thank you and Judges Keith and Kennedy and your Law Clerks for your consideration, patience and time.

Respectfully,

/s/ JORDAN ROSSEN

cc: Hon. Cornelia G. Kennedy
Hon. Damon J. Keith
Edward J. Setlock, Assistant Attorney General
Sally Staebler, Michigan Legal Services Assistance
EEOC, Washington, Attn: Debra A. Millenson
EEOC, Detroit, Attn: Dorothy Smith, General Counsel
Womens Law Fund, Attn: Jane Picker and
Rita Page Reuss
John A. Fillion

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

(April 30, 1974)

INTERNATIONAL UNION, UNITED AUTOMOBILE, AREOSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW, et al,

Plaintiffs,

v.

S. MARTIN TAYLOR, Director, and the MICHIGAN EMPLOYMENT SECURITY COMMISSION, et al,

Defendants.

Civil Action
No. 4-70066

ORDER RELATING TO CLASS ACTION
AND ORDER TO SHOW CAUSE

At a session of said Court held in the Federal Building, in the City of Detroit, State of Michigan, this 30th day of April, 1974.

PRESENT: HONORABLE CHARLES JOINER
U.S. DISTRICT JUDGE

Upon plaintiffs' Complaint, attachments to said Complaint, and Motion for Partial Summary Judgment, upon submission of this Order and Judgment by plaintiffs,

and after extensive conferences in Chambers and the Court being fully advised in the premises:

NOW THEREFORE, it is hereby ordered and adjudged as follows:

I. Plaintiffs' action is maintainable as a proper class action under Rule 23 of the Federal Rules of Civil Procedure. The members of the class, which are more specifically described in Paragraphs 4 through 8 of the Complaint, are, in general, all women who are, or will be employees under the Michigan Employment Security Act (MESA) or who were so-employed in Michigan from and after July 1, 1965.

II. Plaintiffs, defendants, *amici curiae* and said members of the class are hereby ordered to show cause before the Honorable Charles Joiner, Judge of this Court, in Room 251 Federal Building Detroit, Michigan, on July 29, at 11:00 a.m. why the proposed Order and Judgment attached hereto as Appendix A, should not be entered by this Court.

III. Pursuant to Rule 23, FRCP, said members of the class are further notified that:

A. The Court will exclude you from the class if you so request in writing by July 15, 1974;

B. The judgment will include all members of the class who do not request exclusion; and

C. Any member of the class, who does not request exclusion, may, if she so desires, enter an appearance in this matter by and through her own counsel.

IV. It is further ordered as follows:

A. Plaintiffs shall, within 14 days, send a copy of this Order and attachments to all *amici curiae* or proposed *amici curiae;*

B. Defendants shall, by July 1, 1974, pursuant to Rule 23(c)(2), FRCP, send a copy of this Order and attachments to every woman employee who, according to the records of defendants and their agents, has been denied MESA benefits from and after May 1, 1971, allegedly due to their not being "unemployed" within Section 48, MESA, due to maternity leave clauses in contracts or to employer maternity leave policies. Such notification shall be by regular mail to said class members' last know home addresses according to defendants' records;

C. Defendants and their agents shall, by June 30, 1974, cause the notice, attached hereto as Appendix B, to be published in at least the following newspapers: (1) Detroit Free Press (Metropolitan Detroit and out-State editions); (2) Detroit News (Metropolitan Detroit and out-State editions); (3) Flint Journal; (4) Grand Rapids Press; (5) Lansing State Journal; and (6) Marquette Mining Journal. The heading of said notice shall be printed in no smaller than 14 point type and the body of the notice is no smaller than 8½ point type. Said notice shall also be printed in poster-type lettering on a poster no smaller than 8½ x 13 inches in size which shall be affixed to all bulletin boards and other places in the offices of defendant Employment Security Commission and including its branch offices, and other offices or places of business where notices to employees-claimants regarding unemployment insurance matters are customarily posted.

/s/ CHARLES JOINER
Honorable Charles Joiner
U.S. District Judge

Approved:
JOHN A. FILLION
JORDAN ROSSEN
By: /s/ JORDAN ROSSEN
Attorneys for Plaintiffs
8000 East Jefferson Avenue
Detroit, Michigan 48214
Tel: (313) 926-5216
and
FRANK J. KELLEY
Attorney General
Law Building—Seventh Floor
Lansing, Michigan 48901
By: /s/ E. J. SETLOCK
Assistant Attorney General
7310 Woodward Avenue
Detroit, Michigan 48202
Tel: (313) TR 2-4900

APPENDIX A

(Title of Court and Cause)
PROPOSED ORDER AND JUDGMENT

• • •

[Omitted]

APPENDIX B

ATTENTION: Women Employees and Former Employees Who Have, Since June 30, 1965, Been Denied Benefits Under The Michigan Employment Security Act Solely Due to Mandatory Maternity Leave Policies Or Clauses in Contracts.

In July, 1973, a lawsuit was brought on behalf of you and other women employees by the United Automobile Workers

and by certain women employees against the Michigan Employment Security Com mission and others. The suit is *UAW, et al* v. *Taylor, et al,* U.S. Dist. Ct. No. 4-70066. This type of lawsuit is a "class action" and you and other women employees are "members of the class". The suit protests and seeks to stop the practice of denying unemployment insurance benefits under the Michigan Employment Security Act (MESA) to pregnant women, solely because they were forced out of work due to mandatory maternity leave clauses in contracts or unilateral employer maternity leave policies.

That lawsuit is now being resolved. Unemployment insurance claims, filed from and after April 5, 1972, will be reopened if they had been denied solely due to such *involuntary* maternity leave contracts or policies.

This represents a compromise by plaintiffs who sued to have all such claims reopened back to July 1, 1965. The Court Order will not specifically affect and will not prejudice the possible rights of women employees, who were denied benefits due to so-called forced maternity "leaves" from July 1, 1965 through April 4, 1972, to themselves seek to reopen their said claims. But plaintiff UAW and its lawyers have agreed that they will not pursue such claims.

A Court Order formalizing the above settlement will soon be presented to the Court. You are hereby ordered to show cause before the Honorable Charles Joiner, Judge of the U.S. District Court, in his Courtroom, 251 Federal Building, Detroit, Michigan, on July 28, 1974, at 11:00 a.m. why the afore-described Stipulated Order and Judgment should not be entered by said Court.

Pursuant to Rule 23, FRCP, you are further notified that:

MESC MANUAL OF MARCH 20, 1972

A. The Court will exclude you from the class if you so request in writing by July 15, 1974;

B. The Order and Judgment will include you and other women employee members of the class who do not request exclusion; and

C. You or any other member of the class, who does not request exclusion, may, if she so desires, enter an appearance in said lawsuit by and through her own attorney.

S. MARTIN TAYLOR,
Director of the Michigan
Employment Security Commission
by Frank J. Kelley, Attorney
General

MESC MANUAL

Part V	Unemployment Compensation	6335
	(Branch Office)	3-20-72
	Contested Claims	

CONTESTS INVOLVING PREGNANCY

6335

General. Subsection 28(1)(c) of the Act provides in part:

> "* * * a pregnant woman shall be ineligible to receive benefits for any week within the period beginning with the tenth calendar week before expected confinement, as determined by a physician, and extending through the sixth calendar week following the termination of pregnancy."

The Michigan Attorney General, in an opinion dated February 18, 1972, held the above cited clause to be invalid.

As a result of holding that the pregnancy ineligibility provision with respect to the statutory 10 and 6 week periods are unconstitutional, the Commission practice with respect to issuance of (re) determinations on or after March 5, 1972 will no longer automatically apply a finding of ineligibility for such periods.

* * *

In accordance with the provisions of Subsection 48 of the MES Act, an individual shall not be deemed to be unemployed during any leave of absence from work granted by an employer either at the request of the individual or pursuant to an agreement with his duly authorized bargaining agent.

* * *

In applying the applicable provisions of Subsection 48 of the MES Act it must first be determined whether or not the contract provides for a mandatory pregnancy leave of absence. If the leave of absence is mandatory, the individual will be deemed not to be unemployed during such leave.

* * *

In the disposition of cases involving a leave of absence from employment, due to pregnancy, it will be necessary for the Branch Office to specifically request the employer involved, to furnish verbatim, the language pertaining to the granting and/or request for a leave of absence as contained in the contract. * * *

MESC MANUAL

(May 21, 1974)

Part V Unemployment Compensation (Branch Office) Contested Claims 6335 5-21-74

CONTESTS INVOLVING PREGNANCY

6335

General.

Pregnancy is not an identifiable issue. Whenever an issue arises as to a claimant's eligibility during any particular stage of pregnancy, the issues (other than separation issues) will be identifiable as ability and/or availability.

* * *

In accordance with the provisions of Section 48 of the MES Act, an individual shall not be deemed to be unemployed during any leave of absence from work granted by an employer at the request of the individual.

If an individual requests and obtains a leave of absence in accordance with the provisions of Section 48 of the MES Act, she is deemed not to be unemployed during such leave. A specific request for a leave of absence must be made by the individual before she would be deemed as not being unemployed. At the expiration of the leave she may qualify for benefits if otherwise eligible and qualified.

A unilateral leave of absence cannot be imposed by the employer without a specific request being made by the individual involved. If no such request is made, even though the employer placed the individual in "leave status" Section 48 of the MES Act should not be applied so as to conclude that the individual is not an unemployed individual.

If a contract provides that an individual shall become eligible for a maternity leave by submitting medical evidence verifying pregnancy, the mere submission of such evidence is not to be considered as a written request for a leave of absence. Therefore, unless a specific request for a leave of absence is made by the individual, the individual should be considered as unemployed under the provisions of Section 48 of the MES Act.

In the disposition of cases involving a leave of absence from employment, due to pregnancy, it will be necessary for the Branch Office to specifically request the employer involved, to furnish verbatim, the language pertaining to the request for a leave of absence. Such response may be in the form of a reply on Form MESC 1707 or the furnishing of a copy of the request to the Branch Office.

If the individual quit her job voluntarily without good cause attributable to the employer as contrasted to quitting because of a pregnancy illness which prevented her continuing work, the disqualification provisions apply. * * *

MESC INSTRUCTIONS AND NOTICE TO EMPLOYERS

(August 30, 1974)

Department of Labor
MICHIGAN EMPLOYMENT
SECURITY COMMISSION
7310 Woodward Avenue
Detroit, Michigan 48202

August 30, 1974

TO: STATE OFFICE ADMINISTRATIVE STAFF, DISTRICT SUPERVISORS, AND BRANCH OFFICE MANAGERS

FROM: S. MARTIN TAYLOR, DIRECTOR

SUBJECT: IMPLEMENTATION OF FEDERAL COURT ORDER CONCERNING MANDATORY LEAVES OF ABSENCE DUE TO PREGNANCY

This release supersedes the instructions as contained in the release dated August 21, 1974 on the above mentioned subject. The earlier release should be destroyed.

On July 29, 1974 the U. S. District Court issued an order in *International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, et al,* v. *Martin Taylor, Director, and the Michigan Employment Security Commission, et al,* requiring the Commission to "reopen, rehear and reconsider, . . . the claims of all employees-claimants denied MESA (unemployment benefits) from and after April 5, 1972, solely due to . . . mandatory maternity leave contract clauses and to such "leaves of absence" unilaterally imposed due to employer policies . . .". Furthermore, the Court Order also indicated that

such Order does not prejudice the rights or alleged rights of an employee-claimant, who did not receive MESA (unemployment) benefits between June 30, 1965 and April 5, 1972, to on her own *individually* request the MESC for benefits which had been denied because of said maternity leave policies.

To comply with the Court Order to "reopen, rehear and reconsider . . .", it will be necessary for the Commission to identify the claims of those individuals who were denied benefits solely because they were required to take mandatory leaves of absence due to pregnancy at any time within the period from April 5, 1972 through May 31, 1974. No attempt will be made to identify such individuals who did not receive benefits between June 30, 1965 and April 5, 1972. However, in all instances where an individual appears at a branch office and expresses a desire to file a claim for such period, the Commission will consider and/or reconsider the claim of all such individuals who did not receive unemployment benefits during such period because they were placed by their employer on a mandatory leave of absence due to pregnancy.

• • •

On May 21, 1974 revised procedure was released, providing that only a claimant who is on a maternity leave *pursuant to her request* would be considered as not "unemployed" under Section 48 (not in the labor market). In the absence of assurance that such procedure was implemented on or before May 31, 1974 the Cour Order should be considered to be effective for calendar week ending July 3, 1965 through calendar weeks ending June 1, 1974.

• • •

Any claim filed for a compensable period prior to calen-

dar week ending July 3, 1965 must be denied without further processing. The determination should state:

• • •

The 10 and 6 week pregnancy ineligibility provision which held a woman ineligible under Section 28(1)(c) for 10 weeks prior to the expected date of confinement and six weeks following termination of the pregnancy, and which was repealed by Act 104 of the Public Acts of 1974, will not be applied with respect to any retroactive mandatory maternity leave of absence, whether or not previously imposed.

VOLUNTARY REQUESTS FOR LEAVE OF ABSENCE

The U. S. District Court Order issued on July 29, 1974 does not cover a leave of absence granted by an employer pursuant to an individual's request and such individuals are therefore ineligible under Section 48 of the Act. If it is ascertained that the claimant voluntarily requested a leave.

Department of Labor

MICHIGAN EMPLOYMENT SECURITY COMMISSION NOTICE TO EMPLOYERS REGARDING ELIGIBILITY FOR UNEMPLOYMENT BENEFITS IN CLAIMS OF MANDATORY MATERNITY LEAVES OF ABSENCE

Prior to May 20, 1974, the Michigan Employment Security Commission had been holding that a woman on a mandatory maternity leave of absence was deemed not to be "unemployed" under Section 48 of the Michigan Employment Security Act (MESA), and therefore not eligible for unemployment benefits if the leave of absence was ". . . . granted by an employer either at the request of the

individual or pursuant to an agreement with his duly authorized bargaining agent . . . .". This procedure was changed because of proceedings pending before a U. S. District Court.

Thereafter, on July 29, 1974, the U. S. District Court, Eastern District of Michigan, Southern Division issued an order in *International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, et al,* v. *S. Martin Taylor, Director, and the Michigan Employment Security Commission, et al,* holding that the practice of denying benefits under Section 48 of the MESA to women employees, who are forced out of work due to a mandatory maternity leave of absence, is unlawful as contrary to Federal law. The order further requires the Commission to consider and/or reconsider the claims of all women who were on a mandatory maternity leave on or after April 5, 1972 and held that the order does not prejudice the rights of any claimant who did not receive unemployment benefits between June 30, 1965 and April 5, 1972 to individually request such benefits.

As a result of this order the Commission will consider and/or reconsider the claims of all women who did not receive unemployment benefits on or after June 30, 1965, due solely to the reason that they were placed on a mandatory maternity leave of absence by their employer.

You are being asked to provide the Commission with wage and/or separation information concerning a claimant's employment for calendar year 1964 or thereafter. Based upon the information you and the claimant provide, benefits may be paid if the claimant is held to have been eligible for unemployment benefits in all other respects during the week(s) she had been placed on a mandatory maternity leave of absence.

If benefits are paid and charged to your account you will receive copies of checks, which although recently issued, are for weeks ending July 3, 1965 or after. Such check copies will be coded, in the amount block at the top, with the letter "M" and the year to which the payment applies. Charges to your account will be as of the quarter in which the payment is made. Thus, if a payment is made in September, 1974 for a week in 1968, the charge to your account will be made with respect to the quarter ending in September, 1974.

April 28, 1976

UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF MICHIGAN

THE FIRESTONE TIRE & RUBBER COMPANY,

Plaintiff,

v.

S. MARTIN TAYLOR, DIRECTOR, * * * and INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA,

Defendant.
Civil Action File
No. 670651

MOTION FOR COSTS AND EXPENSES; AND MOTION FOR SUMMARY JUDGMENT BY DEFENDANT UAW*

NOW COMES Defendant, International Union, United Automobile, Aerospace & Agricultural Implement Workers

*This represents portions of the motion reproduced by Firestone in Appendix below at pp. 404a-412a.

of America-UAW by its counsel, and hereby moves for summary judgment of dismissal and for costs and attorneys fees in the above action; in support thereof, said Defendant says as follows:

This Motion is based upon the files and records in the above case and in *UAW, et al.,* v. *Taylor, et al.,* Civil Action No. 4-70066.[1] * * *

Plaintiff has failed 'o state a claim upon which relief can be granted for at least the following reasons:

I. *Plaintiff is Barred From Collaterally Attacking This Court's Orders in UAW* v. *Taylor.*

1. It is obvious from Plaintiff's Complaint, Prayer for Relief and Interrogatories directed toward Defendant UAW, that Plaintiff is attempting, in this "new" action, to set aside portions of what was decided in *UAW* v. *Taylor.* More specifically, Plaintiff seeks a declatory judgment, directly opposite to the declatory judgment in *Taylor,* Plaintiff bases its requests for relief upon legal arguments which were decided and rejected in *Taylor,* and Plaintiff asks that its account be credited, because it was charged due to *UAW* v. *Taylor.*

2. Plaintiff was aware of *UAW* v. *Taylor* from and after August, 1973 and it was aware that its account was being charged by the MESC, pursuant to the July, 1974 Order in *Taylor* and the August 30, 1974 MESC Instructions, from and after September 1974. Plaintiff, as this Court ruled in December 1975, had notice of the *Taylor* suit,

[1] The "old" suit will usually be referred to as *"Taylor"*. The instant suit may be called *"Firestone"*.

but chose not to intervene in a timely manner in *UAW* v. *Taylor*.[2]

3. Plaintiff cannot accomplish indirectly, what it unsuccessfully sought to do in *UAW* v. *Taylor*.

4. Plaintiff filed an Appeal to the Court of Appeals for the Sixth Circuit in *UAW* v. *Taylor* and that Appeal is pending.

5. If Plaintiff has any right to relief, which it does not, the Court of Appeals for the Sixth Circuit will now decide those questions.

II. *Plaintiff's Suit is Barred by Res Judicata, Because of An Adverse Order by the Ingham County, Michigan, Circuit Court of August 30, 1974.*

1. The Ingham County Circuit, in *Sadro, et al.* v. *Hamill Mfg. Div. of Firestone and MESC,* Civil Action No. 15738-C, on August 30, 1974, reversed the Appeals Board's denial of benefits to Plaintiff Firestone's employees, who had been forced out of work due to pregnancy. (See Exhibit 11 to said Affidavit of Jordan Rossen). That State Court Order was expressly based upon this Court's July 29, 1974 Order in *Taylor*. The State Court, thus, held that this Court had jurisdiction in *Taylor,* that this Court acted properly in *Taylor* and that State Courts were bound by *Taylor*. Plaintiff here is bound by all of said holdings.

2. Firestone was properly served in *Sadro*. (Exhibits 7, 8, 8A, 9 and 10 to Rossen Affidavit). Plaintiff Firestone did not appeal said Ingham Circuit Court Order.

---

[2]See also Exhibits 13, 14, 15 and 16 to Rossen Affidavit in *Taylor* which Affidavit is hereto attached and herein incorporated. Hereto attached herein incorporated are also the following documents filed in *UAW* v. *Taylor:* 1) Plaintiffs Opposition to Motion to Intervene and other Motions by Firestone Tire and Rubber, Hamill Mfg. Co., Div. of Firestone, Firestone's Steel Products Co., Div. of Firestone; 2) Affidavit of Gerald Koskie; 3) Affidavit of Anne McLeod Trebilcock; and 4) Affidavit of Angelo Bommarito.

3. Plaintiff is now barred, by *res judicata* or collateral estoppel, from re-litigating what was decided by the Ingham Circuit Court, as afore described in Paragraph II.1. See, for example, *Cacavas* v. *GM and UAW,* 444 F.2d 506, 507 (6th Cir. 1971), affirming dismissal by the late Chief Judge Theodore Levin of this Court.

III. *Plaintiff is Barred by Laches from Seeking its Requested Relief.*

Notices of this Court's proposed ruling that it was unlawful to deprive women of unemployment insurance benefits, after they had been forced on maternity leaves of absence, was posted throughout Michigan after April 1974. Plaintiff was advised of the action in *Taylor* in August 1973. By choosing not to come in in a timely manner, Plaintiff is estopped and barred by Laches from now seeking to set aside what this Court did in *UAW* v. *Taylor*. As stated above, this Court held that Plaintiff had notice of the *Taylor* suit.

IV. *Plaintiff's Suit Does Not Meet the Requirements of Rule 60, FRCP.*

1. Plaintiff's new suit seeks relief from the *Taylor* judgment. Though Plaintiff does not cite Rule 60, that Rule governs Plaintiff's requested relief.

2. Under Rule 60(b), a party may seek relief from judgment in the original proceeding or by bringing an independent action.

3. Plaintiff Firestone cannot now get relief from the *Taylor* judgment, under Rule 60, because it can meet none of the requirements of that Rule. This Court so held in its December 1975 Order. Plaintiff cannot show "mistake, inadvertence, surprise or excusible neglect" because it *deliberately* chose not to timely intervene in *Taylor*.

V. *Plaintiff is Wrong On the Merits.*

1. Plaintiff bases its request for relief on its view that this Court's decisions and Orders in *UAW* v. *Taylor* were wrong as a matter of law and that *Geduldig* v. *Aiello* procluded relief for women in *UAW* v. *Taylor.*

2. Moreover, Plaintiff's argument is wrong as a matter of law. *Cleveland Board of Education* v. *LaFleur,* 414 U.S. 632 (1974), affirming 465 F.2d 1184 (6th Cir. 1973); *Turner* v. *Department of Employment Security of Utah,* U.S. , 46L.E.2d 181 (November 17, 1975); and *UAW* v. *Taylor,* Orders of July, 1974, July, 1975 and December, 1975.

VI. *There is No Jurisdiction of the Subject Matter.*

1. All of the substantial Federal issues in this case have been decided in *Taylor.*

2. There is no Federal question left which might give this Court jurisdiction over the subject matter of Plaintiff's new suit.

VII. *Plaintiff is Not Entitled to Any Equitable Relief.*

1. Plaintiff unlawfully forced women out of work due to pregnancy.

2. Plaintiff has not paid full back pay to these women and, thus, has already profited from its wrongdoing while the women in question have suffered financially from Plaintiff's wrong doing.

3. Even considering the small amount of money involved in unemployment insurance benefits (compared to lost back pay) Plaintiff has not been hurt financilly to any great extent. Plaintiff's account was not charged with unemployment insurance from July 1, 1965 to September 1974, because of its unlawful actions and those of the Defendants in *UAW* v. *Taylor.* Thus, for over nine years,

Plaintiff had the use of such money, interest free. At the prevailing rate for borrowing money during those nine years, Plaintiff has already obtained nearly the equivalent of any unemployment insurance which might have been charged to its account, after September 1974. Plaintiffs in *UAW* v. *Taylor* did not seek interest on the amounts wrongfully withheld from members of the class, which would have been a proper measure of relief. Thus, Plaintiff Firestone, has done quite well as a result of its unlawful conduct and the unlawful actions of the Defendants in *UAW* v. *Taylor.*

4. Plaintiff Firestone is asking this Court to exercise its powers in equity by ordering the MESC not charge its account with MESA benefits. Plaintiff has dirty hands and is not entitled to ask this Court for an equitable relief.

5. If this Court were to grant Plaintiff's request to have its accounts credited by the MESC, it would cause the MESC to spend considerable time and money undoing what it previously did and this time to benefit a wrongdoer.

VIII. *The UAW is Not a Proper Party Defendant in This Case.*

• • •

IX. *Defendant UAW is Entitled to an Order For Costs and Expenses Including Time Expended by its Legal Department in Defending This Action and Preparing the Above Motion.*

• • •

WHEREFORE, for the above reasons and those stated in our Brief and based upon *UAW* v. *Taylor* and the Briefs and Affidavits filed in *Taylor,* Defendant International

Union, UAW respectfully prays that this Court grant the following relief:

• • •

Respectfully submitted,
John A. Fillion, General Counsel
Jordan Rossen, Associate General Counsel
By: /s/ JORDAN ROSSEN
Attorneys for Defendant International Union, UAW
8000 East Jefferson Avenue
Detroit, Michigan 48214
(313) 926-5216

• • •

Dated: April 27, 1976

• • •

Page 412 of Firestone's Appendix Below:

NOTE: The Exhibits to the foregoing "Motion for Costs and Expenses; and Motion for Summary Judgment by Defendant UAW" (each initially made in *UAW* v. *Taylor*) are contained in the Joint Appendix as follows:

J.A. Pages

1. Supplemental Affidavit of Jordan Rossen of December 1975, together with attachments.....164-216
2. Plaintiffs' Opposition to Motion to Intervene and Other Motions of Firestone 247-251
3. Affidavit of Angelo Bommarito of December 1975, together with attachments 217-230
4. Affidavit of Gerald Koskie, together with attachments 231-244
5. Affidavit of Anne McLeod Trebilock 245-246

ADDENDUM

EEOC'S POST *GE* v. *GILBERT* PROCEDURES

Number 915
December 30, 1976

1. SUBJECT. PROCEDURES FOR PROCESSING PREGNANCY RELATED ALLEGATIONS OF SEX DISCRIMINATION
2. PURPOSE. This notice establishes the procedure for processing charges of sex discrimination in light of *General Electric Co.* v. *Gilbert,* 45 U.S.L.W. 4031 (December 7, 1976).
3. ORIGINATOR. Office of Compliance Programs.
4. EFFECTIVE DATE. January 3, 1977

• • •

6. The Commission has determined that distinctive treatment of pregnancy or maternity in the following situations continues to be unlawful because these criteria have a disproportionate impact on women and are therefore gender based or are by their terms gender based:

• • •

   d. mandatory maternity leaves for predetermined time periods.
   e. dismissals of pregnant women
   f. denials of reemployment rights to women on leave for pregnancy-related reasons
   g. denials of unemployment benefits to pregnant women
   h. denials of seniority or longevity credit to women on leave for pregnancy-related reasons

• • •

7. District Directors will, therefore, continue to make determinations on charges involving the above criteria in

the circumstances permitted prior to the Supreme Court's decision,

* * *

Federal Rules of Civil Procedure:

Rule 24. Intervention.

(a) Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of the United States confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

(b) Permissive Intervention. Upon timely application anyone may be permitted to intervene in an action: (1) when a statute of the United States confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or state governmental officer or agency or upon any regulation, order, requirement, or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

Rule 56. Summary Judgment.

* * *

(e) Form of Affidavits; Further Testimony; Defense Required. * * * When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

* * *

Rule 60. Relief From Judgment or Order.

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, Etc. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceedings for the following reasons: (1) mistake, inadvertence, suprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not

affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as provided in Title 28, USC, § 1655, or to set aside a judgment for fraud upon the court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

Federal Unemployment Tax Act

§ 3304. Approval of State laws

(a) Requirements.—The Secretary of Labor shall approve any State law submitted to him, within 30 days of such submission, which he finds provides that—

* * *

(12) no person shall be denied compensation under such State law solely on the basis of pregnancy or termination of pregnancy;*

Social Security Act:

42 U.S.C.A. PUBLIC HEALTH AND WELFARE Ch. 7

§ 503. State laws, provisions required; stopping payments on failure to comply with law

(a) The Secretary of Labor shall make no certification for payment to any State unless he finds that the law of such State, approved by the Secretary of Labor under the Federal Unemployment Tax Act, includes provision for —

(1) Such methods of administration * * * as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due; and

* * *

(3) Opportunity for a fair hearing, before an impartial tribunal, for all individuals whose claims for unemployment compensation are denied;

Title 28, U.S. Code Annotated:

§ 1738. State and Territorial statutes and judicial proceeding; full faith and credit

The Acts of the legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto.

The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexted, if a seal exists, together with a certification of a judge of the court that the said attestation is in proper form.

Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken. June 25, 1948, c. 646, 62 Stat. 947.

*26 U.S.C.A. § 3304(a)(12), as amended by Pub. Law 94-566, § 312(a), October 20, 1976.

U.S. DEPARTMENT OF LABOR LETTER
U.S. DEPARTMENT OF LABOR
MANPOWER ADMINISTRATION
Washington, D.C. 20210

December 31, 1970

UNEMPLOYMENT INSURANCE PROGRAM
LETTER NO. 1097

TO: ALL STATE EMPLOYMENT SECURITY AGENCIES

SUBJECT: Provisions in State Unemployment Insurance Law Which Discriminate on the Basis of Sex

* * *

PURPOSE: To request State agencies to obtain early legislative action to remove State unemployment insurance law provisions which discriminate against persons on the basis of sex.

The enactment of P.L. 91-373 makes it necessary for the next session of State legislatures to amend extensively State unemployment insurance laws to implement the provisions of the new Federal law. This presents an opportunity to obtain significant improvements in State unemployment insurance laws which are unrelated to P.L. 91-373.

A much-needed improvement is the removal of the provisions which have crept into State unemployment insurance laws that discriminate against women. Aside from the obvious inequity of such provisions, they are becoming increasingly the subject of legislative scrutiny, of proposed legislative remedy, or of challenge in courts. The three references used above, and discussed below, illustrate a growing trend.

* * *

2. *Pregnancy and post-pregnancy provisions*

Provisions in State laws subjecting pregnant and post-pregnant women to more stringent eligibility conditions than are applied for disabilities common to both sexes seem patently discriminatory. Insofar as the period of actual pregnancy is concerned, a claimant would, at some point during the pregnancy, be considered unable to work and/or unavilable for work even if the State law had no special "pregnancy provision." That being the case, special pregnancy provisions are subject to challenge as discriminatory.

The special post-pregnancy provisions in State laws which provide for some arbitrary period of ineligibility without regard to the point in time at which the actual disability terminated, or which impose some additional requirement or obstacle to reinstatement to eligible status which is not imposed in the case of any other disability are clearly discriminatory.

* * *

/s/ PAUL J. FASSER, JR.
Deputy Assistant Secretary
for Manpower and
Manpower Administrator

OPINION IN *GOODMAN* v. *CHRYSLER CORP. AND MESC*

[¶ 9341] *Minnie Goodman* v. *Chrysler Corp. and the MESC*. Michigan Circuit Court, Wayne County. No. 208 538, 2/6/73.

Opinion on Motion for Summary Judgment and Remand

Bowles, J.: The issue posed is whether or not that provision of Section 28(1)(c) providing that a pregnant

woman shall be ineligible to receive benefits for any week within the period beginning with the 10th calendar week before expected confinement as determind by a physician and extending through the 6th calendar week following the termination of pregnancy is constitutional.

Can this exclusion face the scrutiny of the test of equal protection of the law? The test would be here whether the particular exclusion is rationally related to the purpose of the legislation which, in broad terms, is calculated to provide unemployment compensation to one who is able to work who, at the same time, cannot secure suitable work. This particular classification or exclusion on the face of it does not provide benefits to workers who are involuntarily unemployed; it does not encourage stable employment.

The Court can and will give respectful consideration to the pronouncements of responsible department experts. The United States Department of Labor Unemployment Insurance Program Letter No. 1097, dated December 31, 1970, observes:

> "Provisions in State laws subjecting pregnant and post-pregnant women to more stringent health conditions than are applied for disabilities common to both sexes seems patently discriminatory. Insofar as the period of actual pregnancy is concerned, a claimant would, at some point during the pregnancy, be considered unable to work and not available to work, even if the State laws had no special pregnancy provision. That being the case special pregnancy provisions are subject to challenge as discriminatory."

A similar view was expressed by Harold Rosemont, Director of the Unemployment Insurance Bureau of the MESC. The exclusion may be analogized to *LaFleur* v. *Cleveland*

Board of Education, 465 F. 2d Sec. 1184 wherein it was held that the School Board policy of requiring a female teacher to take maternity leave from five months before expected delivery until three months after birth of her child would be discriminatory. It is not reasonable—it flies in the face of medical fact—and is arbitrary to automatically exclude all pregnant females from benefits for a fixed period of time without regard to the physical ability to work of each particular employee. The particular pregnancy provision, then, is unconstitutional as denying equal protection of the law.

Of perhaps more general and fundamental concern, the particular pregnancy provision here not only fails to effectuate the sound policies of the Federal Unemployment Insurance Program but conversely impedes and frustrates that policy. The Michigan Act must be administered and construed in line with the declared policy and purposes of the Federal programs under the Social Security Act, Title 42 USCA 501 et seq. Fundamentally, it is a Federal program administered by individual States. The program involves grants to the States which meet the Federal standards. Hence, it is elementary that the State Act must conform to Federal legislative intentions and declared policies.

The Preamble to the Michigan Act and its Section 2 indicate both Federal and State policies to protect workers from the hazards of unemployment. The disputed exclusion denies potection to a type of worker, that is, one involuntarily out of work, for which the Federal program was designed and intended. The Federal program, then, cannot be frustrated or its laudable purposes defeated by State Acts or regulations. See *Nash* v. *Florida Industrial Commission,* 389 U. S. 235, 239, 240.

This is apart from the question that there is a felt need

for coverage of women. All available governmental and private statistics indicate, fundamentally, a greater need for the protection of women than for males. Less than 20 percent of women earned more than $6,999 in 1969 and a general earnings gap in salaries paid to male and female workers is not based upon differences in educational achievement or capability. In fact, the level of wages paid to women throughout the '60's was less favorable in relationship to the level of men's wages than it had been in the 1950's. This is not the kind of "progress" we can be proud of. Statistics also show that the unemployment rates are consistently higher for women than for men; for example, in 1969, the rate was 4.7 percent as opposed to 2.8 percent for men. We, as trial judges sitting in a court of general jurisdiction, are acutely aware of the many one-parent families where the mother, in attempting to keep the family together, is in the labor market and so the problem of the working mother is the problem of the minor children.

The necessary and brutal result, by classifying women as being incapable of work for the 10 weeks before the expected delivery and then for a nadditional six weeks following confinement, is that the Act denies to the excluded class benefits upon which they might well depend for the sheer necessities of life, not only for themselves but for the minor children.

We can find no rational basis in Unemployment Compensation law or social policy justifying discriminatory treatment. See *Reed* v. *Reed,* 404 U. S. 71.

It is then clear that the particular exclusion is in conflict with the fundamental purposes of the Federal Unemployment Insurance Program of which the Michigan Program is a part.

Without reference to the other legal considerations and arguments made, and for the reasons hereinbefore set forth, the Court holds the subject exclusion unconstitutional.

OPINION IN *MILEFF* v. *MESC AND KRAFTUBE FABRICATION*

[¶ 8764] *Willa June Mileff* v. *MESC, App. Bd., and Kraftude Fabrication.* Michigan Circuit Court, Wayne County. No. 304-515, 1/7/60.

[Opinion of the Court]

Baum, J.—The Court: Well, I'm going to do something that was started as a recent practice. You are going to get a nisi opinion, a provisional opinion. This is the way that I feel that the case ought to be decided and the provisional decision is subject to correction. You have a right to submit briefs if you want to, and if they persuade me that I have gone wrong, the decision will be changed.

I think that the Appeal Board ought to be reversed. I think that there was an error of law here.

First, I think that the Appeal Board has given Section 48 an interpretation never intended by the Legislature. In interpreting Statutes, I think that the Judicial body doing the interpreting should strive for interpretations which make the Statute internally consistent and harmonious, where this is reasonable.

Now, in view of the general purposes set forth early in the Statute, I believe in Section 2, one should avoid construing Section 48 in such a way as to penalize or disqualify people who are out of work due to no fault of their own and who are ready, willing and able to work. At least, there should

be an endeavor to construe Section 48 in this way, if such construction is reasonable. I think it is.

Section 48 says that there is no unemployment when a person is away from work on a leave of absence at his request, or pursuant to an agreement between the employer and the duly authorized bargaining agent of the employee.

Let us look at the first phase of this Statue. I stress the phrase, "at the request of the individual." Properly construed I think that this Statute has reference to a leave of absence during such time as the request of the individual for a leave persists.

In the case before me, the request for leave of absence ceased to persist some time in June, and under appropriate statutory construction unemployment commenced at this time.

Let me now direct my attention to the second portion of Section 48 which is concerned with leaves of absence which are pursuant to an agreement with the duly authorized bargaining agent. If we turn to the collective bargaining agreement which was in force in this case, I think that the following observations can be made and are well founded:

Article 11, Section 1 of the Collective Bargaining Agreement is designed, primarily, for the convenience of the employee. It is designed to give the employee a leave with the assurance that he will be able to return to work, in those cases where the employee has good cause for such leave. In Section 1 of the collective agreement I stress this phrase:

> "—without the loss of seniority to an employee *who wishes* to leave the service of the employer, temporarily, for a period not to exceed one year."

The "wish" of the employee would seem to be paramount and determinative. There is nothing in this section to suggest that the wish originally expressed by a worker is unalterable. This would mean to me that an employee could, without the loss of seniority, alter his original request for leave, so as to shorten the leave period. Thus a leave of absence under Section 48 which is in accordance with the collective bargaining agreement would be a leave of the length desired by the employee, not to exceed one year. In Mrs. Mileff's case there was a leave in accordance with the union contract until June when she asked to return to work and not thereafter.

In any event, it seems to me, that under Section 48 one ceases to fall within the disqualification; or, to put it another was, an employee is deemed to be unemployed for compensation purposes at such time as the employee manifests a desire to return to work and is ready, willing and able to do so.

There is a third portion of Section 48 having to do with leaves of absence "in accordance with law". This portion says there is no unemployment during such a leave. "In accordance with law" is a very general and vague phrase. I'm not sure that I know what it means. But, I do not think it means that, by private contract, an employee can deprive himself of the right to compensation during a period of involuntary and faultless unemployment while he remains ready, willing and able to work.

To interpret the vague language, "in accordance with law," otherwise would do violence to Section 31 of the Statute (which renders unenforceable any contracts made by employees to forego compensation benefits). And, it seems to me, that an interpretation which would hold that Mrs. Mileff was not unemployed although out of work through no fault of her own and ready, willing and able to work would be in conflict, also, with the beneficent purposes

of the Statute set forth in Section 2. "In accordance with law" does not mean in discordance with Section 2 and 31 of the Employment Security Act. And, even if she had made a contract to stay away from work until September, if the contract had the effect of barring compensation, it would not, in my opinion, be in accordance with law as meant in Section 48.

I think that there is a temptation to error in a case of this kind, which arises from our general, well accepted, orthodox notions of contract law. Under the law of contracts we frequently allow individuals to make their own law as between one another; and, when an individual who is of age, mentally competent and not under duress, makes his own bed, the law generally requires that he lay in it, even though it is full of prickly thorns. That is the law of contracts, that is not the law of social security. Thus, even if Mrs. Mileff was barred by a contract between her and the employer from going back to work before September, and she could not successfully sue for wages for the period from June to September, this does not mean that she is not entitled to unemployment compensation.

Even in the law of contracts we sometimes protect groups or people who are too weak or inadequate or who lack the bargaining power to protect themselves. As a matter of public policy, we hold that certain kinds of contracts made by people in these categories are unenforceable.

We have done something of this nature with respect to contracts of parents for employment of their children. Under the common law, until emancipation of the child, the parent could direct his labor. We now have child labor laws which we do not permit adults to alter by contract. We have minimum wage laws which we do not permit employers and their employees to alter by contract between them. We have

maximum hours laws which we do not permit employers and their employees to set aside by their own contract. And, I suppose, many other examples could be found.

The Statute we are concerned with is a similar statute. It seeks to relieve the burdens of insecurity resulting from unemployment which is involuntary and without substantial fault or taint of character on the part of the employee. But, we need not go so far as to say that a contract for a leave of absence of fixed duration is in no wise enforceable.

It may be, as a matter of contract law, that one who enters into an agreement for a leave of absence for one year cannot, prior to the end of that year, force the employer to hire him. And, if he requests employment at the end of six months, it may well be that he will have no action for breach of contract against the employer who refuses to hire him. But, we are not talking about a contract suit now or a contract right, we are talking about the right to social security.

In my opinion, in such a Statute as the one we have, we should guard against giving effect to private agreements between employer and employee which may deprive decent employees without fault from receiving security which the Statute intended to confer upon them. Thus, even if there were an agreement between the employer and the claimant that she would take a leave until September, this would not be a measure, "in accordance with law", which would prevent her from being "unemployed" under the Statute from and after the day in June when she asked to go back to work, armed with medical proof of her employability.

Let me turn now to Section 29(d) which is the section specifically concerned with pregnancy leaves. I do this since it is possible that this section, rather than Section 48, governs. Section 29(d) is a particular and specific section

having to do with the very situation before this Court today.

Section 29(d) provides that an individual shall be disqualified for benefits for the duration of her unemployment when it is found by the Commission that total or partial unemployment is due to pregnancy. There follows a proviso as follows:

> "Provided that this provision shall not apply to an individual who has received a leave of absence due to pregnancy from her employment and applies for reinstatement at the termination of such leave but is not re-employed by such employer. Leave of absence, as used in this section shall mean an authorized absence from employment with an assurance of re-employment by the employing unit."

Now, the first question I have about Section 29 is whether or not the proviso is even applicable. Section 29 says that an individual is disqualified for the duration of unemployment due to pregnancy. Now, the language, "due to pregnancy" calls for some interpretation. Does, "due to pregnancy," mean originated by pregnancy? That is, does it have a reference to the first cause of unemployment? Or, does, "due to pregnancy," have reference to employability? That is, does this provision have reference to the reason for the continuation of unemployment? To put the last question differently, does this provision mean that there should be disqualification from unemployment benefits only as long as the woman in question is partially or wholly unemployable due to pregnancy? Or, does it mean that once a woman leaves a particular job because she is pregnant she remains disqualified forever from getting compensation for that job loss even though she regains her strength and employability.

Well, it seems to me that the latter construction is not sensible. It is not the construction which is in keeping with the beneficent purposes of this Statute. In my mind such an interpretation seems to create a jarring disharmony with Section 2 of the Statute. Why should a woman be forever barred from employment benefits for a particular job loss because at one time she became unemployable due to pregnancy. This doesn't make sense to me. This is not social security, but its very antithesis, social insecurity.

This is to say that when a woman bears a child she should suffer a penalty not applied to persons who become disabled from employment due to poor health or injury or other physical reasons. This seems not only contrary to the expressed policy of the Statute, but contrary to any other basic notions of public policy and fair play. I have never heard of a legislator who is against motherhood, but it is suggested here that the entire Legislature of our State intended a meaning for this Statute which penalizes motherhood. This is too much for any elected public official to swallow.

If we construe the basic declaration of Section 29(d) in a manner consistent with Section 2 of this Statute, we have no reason to look further to the proviso. The proviso only comes into play in the event of disqualification. There is a disqualification from unemployment only for so long as the employee is partially or totally unemployable by reason of the pregnancy. I would suppose that this would include not only the period of gestation but also the period in which there is some physical aftermath or impairment by reason of the pregnancy and birth.

But, in the case, the evidence is undisputed that the woman became employable in June. The finding at the administrative level of the Commission, that this woman

was not ready and able to work in June is against the overwhelming weight of the evidence and without any support whatsoever in the record. The medical evidence shows that she was able to work in June. Therefore, at the time, in June, when she requested employment and it was denied her by the employer, she was unemployed under Section 48 and was not disqualified for benefits under Section 29(d).

For these reasons, the decision of the Appeal Board of the Commission should be reversed.

If any of you would like to file a brief, let me give the employer a period of fifteen days in which to file a memorandum. What I would appreciate more than an elaborate brief, Mr. Fritz, if you want to file a brief, would be a memorandum in which you state your legal propositions and the authorities for those propositions.

Mr. Fritz: I don't think that would be necessary, to file a brief. I wouldn't care to have you hold the case over that long.

The Court: If, Mr. Long, you think that I have gone frong; you shold have an opportunity to file a brief to tell me what the right path is. Mrs. Conway, if you think that I have reached the right result but for the wrong reasons, you can file a brief, if you desire.

Mrs. Conway: I have no desire to file a brief. I am very well satisfied.

Mr. Long: I will say, at this point, I will not file, that we will not file a brief.

The Court: If you are all sure that you will not file briefs, then we will consider the matter disposed of.

Claimant entered the employment of this employer on February 23, 1953 as a press operator. At a date prior to December 26, 1957, the claimant requested and was granted a leave of absence in connection with her pregnancy. The

leave was granted after a discussion of the matter between the claimant and the employer's general manager, and the discussion confirmed by a letter to the claimant wherein it was stated, "Your request for a leave of absence has been granted until September 29, 1958. It is understood you will advise the company your date of return to regular employment before your leave has expired."

The claimant's child was born on April 30, 1958 and on June 9th of that year the claimant called the employer to inform him that she had her doctor's permission and was returning to work. Claimant was told by the employer that her leave of absence extended to September 29 and that she could not be reinstated until such date.

The claimant contended that the general manager had led her to believe at their meeting that if she was well before the date of expiration of the leave she could at that time return to work if she had a permission slip from her doctor. For this reason the claimant contended further that she interpreted the letter to mean that she only needed to inform the employer she was well again and her leave of absence would be concluded.

OKLAHOMA ATTORNEY GENERAL OPINION

[¶ 8144] Pregnancy disqualification violates equal protection clause of the U. S. Constitution.—Atty. Gen. Op. No. 72-211, 11/22/72.

The Attorney General has received your request for an opinion wherein you, in effect, ask:

> "Is 40 O. S. 1971, § 216(g), pertaining to the disqualification of unemployment benefits to women 6 weeks before and 6 weeks after giving birth to a child, constitutional?"

Title 40 O. S. 1971, § 216 specifically states that:

> "An individual shall be disqualified for benefits:
> ". . .
> "(g) For the six (6) weeks before the expected date of the birth of a child to such individual and continuing for six (6) weeks after the date of the actual birth of said child."

It is further apparent that the Oklahoma Act must be construed and administered in accordance with the policy and purposes of the federal program and federal regulations under the Social Security Act (42 U. S. C. A. § 501, et seq.)

• • •

It is clear, therefore, that the Oklahoma Legislature is not unrestrained in the regulations it can impose upon the program, since the program must ultimately conform to federal standards.

In *Nash* v. *Florida Industrial Commission,* 389 U. S. 235, 88 S. Ct. 362, 19 L. Ed. 2d 438 (1967), Mr. Justice Black, speaking for a unanimous Supreme Court, said in part:

> "It appears obvious to us that this financial burden which Florida imposes will impede resort to the Act and thwart congressional reliance on individual action. A national system for the implementation of this country's labor policies is not so dependent on state law. *Florida should not be permitted to defeat or handicap a valid national objective by threatening to withdraw state benefits from persons simply because they cooperate with the Government's constitutional plan. . . .*

The section involved denies benefits to a pregnant female for a 12 week period. Such exceptions to eligibility would

generally be valid, provided they did not conflict with the congressional purpose in enacting the program, other federal law, or the Constitution.

Title VII of the 1964 Civil Rights Act [42 U. S. C. §2000e-2(a)] provides in part:

• • •

It thus becomes clear that the Legislative Branch of the Federal Government has expressed strenuous objection to laws which discriminate against women solely on the basis of sex.

The Executive Branch of the Federal Government has also acted. The Equal Employment Opportunity Commission's Guidelines on Discrimination Because of Sex, which were last amended and reissued on March 30, 1972 (37 F. R. 6835), effective on April 5, 1972, are codified as Title 29 C. F. R., Chapter XIV, Part 1604, Sections 1604.1 to 1604.10, as amended. The pertinent sections to the issue at hand read as follows:

• • •

The section in question, therefore, is of dubious validity for the reasons set out above and in light of the 1964 Civil Rights Act. The final blow to the validity of this statute, however, most certainly comes from a fundamental principle of our laws as old as the Constitution itself—the equal protection of the laws.

• • •

A provision in a state's unemployment compensation law subjecting pregnant and post-pregnant women to more stringent eligibility requirements than are applied to other temporarily disabled persons seems patently discriminatory, and thus prohibited by the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the

United States. Such a statute discriminates between otherwise similarly situated classes on the basis of a physical condition unique to one sex. If that discrimination cannot be reasonably justified, then it is contrary to the law and public policy of the land. It is equally clear that a statute which discriminates on the basis of pregnancy is discriminating on the basis of sex.

• • •

The criteria normally applied (availability for work) is clearly more than adequate for the termination of benefits for *all* persons under the program about to undergo a temporary disability, whether it be pregnancy or otherwise.

It is, therefore, the opinion of the Attorney General that your question be answered in the negative. Section 215(g) of Title 40 of the Oklahoma Statutes is based exclusively on a physical condition unique to one sex, female, and is prohibited by Title VII of the Civil Rights Act of 1964 and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

CLAIM OF *MONROE* v. *MESC, EMPLOYER*
STATE OF MICHIGAN
EMPLOYMENT SECURITY APPEAL BOARD

In the Matter of the Claim of	
KATHLEEN J. MONROE,	Appeal Docket
Claimant	No. B75-6555-48846
MICHIGAN EMPLOYMENT	Social Security
SECURITY COMMISSION,	No. 372-52-5396
Employer	

DECISION OF APPEAL BOARD

This matter is before the Appeal Board for disposition pursuant to the order issued on December 12, 1975 by the

Honorable Charles W. Joiner, Federal District Judge, in the case of *International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, et al.,* vs. *S. Martin Taylor, Director, and the Michigan Employment Security Commission, et al.,* Civil Action No. 4-70066, which states as follows:

• • •

It is, therefore, held that the claimant shall be entitled to benefits pursuant to said order.

It is further held that the claimant is able and available for the period from June 20, 1971 through July 31, 1971 and the weekly benefit entitlement during said period is left for Commission determination.

/s/ WILLIAM J. McBREARTY,
Chairman
/s/ GERARD P. PEPLOWSKI,
Member

Dated and mailed at
Detroit, Michigan on
June 25, 1976

CLAIM OF CONLEY AND HAMILL MFG.
DIV. OF FIRESTONE, EMPLOYER*
Department of Labor
MICHIGAN EMPLOYMENT SECURITY
COMMISSION
REFREE SECTION
DECISION

In the Matter of the Claim of
Karen A. Conley
1700 W. Atwater Rd.
Bad Axe, Mich. 48413
S.S. No. 372-42-7036

Employer Involved
Hamill Manufacturing Company
(Div. of Firestone Tire & Rubber Co.)
334 East Soper Road
Bad Axe, Mich. 48413
Appeal No. B75-1449 et al
(See Attached List)

Referee: W. Raymond Adkins
Employer appealed Redetermination of: Janary 14, 1975 on January 17, 1975
Hearing(s) held on: March 19, 1975

FINDINGS OF FACTS AND REASONS

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This matter came on for hearing before this Referee in Detroit on March the 19th, 1975, at a proceding attended by the following parties:

Dianne B. Fraser, Attorney, from Dykema, Gossett, Spencer, Goodnow & Trigg, representing Employer.

*This claim was heard due to UAW v. Taylor.

Angelo Bommarito, Compensation Representative, International Union, United Automobile, Aerospace & Agricultural Implement Workers of America-UAW, representing Claimant Karen A. Conley and all other Claimants on attached list.

A protracted hearing was held in this matter, at which extensive oral argument was offered for the record by both counsel for the employer and by the claimant's duly authorized representative.

We make the following findings of fact:

After a claim for benefits was filed by the claimant and investigated at some length by the local branch office, a determination was formally made and formally issued under date of November the 15th, 1974, on the face of which substantial, specific adjudications were set forth concerning the claimant's eligibility for benefits for various periods, and the face of the mentioned determination also set forth, in clear and unconfused printed matter on the form, instructions concerning the character of the document and the nature of statutorially established protest rights.

The employer did not attempt to seek reconsideration of this matter until it filed with the local branch office on December the 20th, 1974 • • •

The employer, in receipt of a specific adjudication bearing specific instructions concerning statutorially established protest rights, neither complied with the instructions and filed a timely protest to the adjudication involved, nor sought, after receipt of the adjudication, any advice or cousel from the local branch office concerning either the contents of the adjudication or the instructions printed thereon concerning rights of protest.

• • •

DECISION

The Denial of Request for Reconsideration issued in this matter by the Commission to the employer on January the 14th, 1975 is hereby affirmed.

/s/ W. RAYMOND ADKINS,
Referee

Mailed at Detroit, Michigan, March 29, 1975

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TENNESSEE ATTORNEY GENERAL OPINION

Opinion No. 2 (June 21, 1976)

Regarding the constitutionality of the pregnancy provisions of T. C. A. § 50-1324 (A) which establish a conclusive presumption of incapacity for twenty-one days after the date of birth, and ask that our opinion be rendered in the light of the recent United States Supreme Court decision in the case of *Mary Ann Turner* v. *Department of Employment Security and Board of Review of the Industrial Commission of Utah*, — U. S. — (1975), and the official position of the United Department of Labor in that regard as promulgated in Unemployment Insurance Program Letters Nos. 1-76 and 1097.

It is the opinion of this office that the conclusive presumption of incapacity for twenty-one days after the date of birth contained in T. C. A. § 50-1324(A) is unconstitutional in light of the *Turner* decision.

Further, it is the opinion of this office that the court's holding in *Turner* that "the Fourteenth Amendment requires that unemployment boards must achieve legitimate state ends through more individualized means when basic human liberties are at stake" would be substantially complied with if, when determining "availability for work", the standard to be used for pregnant women would be the standard currently used for those who are "sick or disabled" as prescribed in T. C. A. § 50-1324(A).

PORTION OF PAGE 20 OF FIRESTONE'S BRIEF TO THE COURT OF APPEALS

• • •

***Firestone does *not* ask—and has not asked—that the MESC seek refunds from claimants to whom benefits have already been paid in the event that Firestone prevails on the merits.[8] Since the MESC's actions in this case have caused the erroneous payments to claimants, Firestone has suggested that, if Firestone ultimately prevails on the merits, the Court below (or the MESC on its own initiative) should act so that refunds will not be sought by the MESC.

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[8] In proceedings before the MESC, Firestone is asking that its account be credited by the amounts wrongfully paid to pregnant claimants, these amounts to be made up by all employers in Michigan.